REPORT OF THE FINNISH CHANCELLOR OF JUSTICE 2010

SUMMARY

HELSINKI 2011

This report is an abridged version of the report of the Chancellor of Justice of the Government of Finland for 2010. It includes the majority of the main text, and for example, some of its ruling explanations as well as statistical information and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice.

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ISSN 1456-4998

TO PARLIAMENT AND THE GOVERNMENT

Under Section 108 (3) of the Constitution of Finland I respectfully submit to Parliament and the Government a report of the Chancellor of Justice's activities and observations concerning compliance with the law in 2010.

During the reporting year, the office of the Chancellor of Justice was exercised by Mr Jaakko Jonkka, Doctor of Laws, LL.M. trained on the bench. Deputy Chancellor of Justice Mr Mikko Puumalainen, Licentiate of Laws, LL.M trained on the bench, attended to the duties of the Chancellor of Justice when the Chancellor of Justice was prevented from exercising his office. Appointed as a substitute to the Deputy Chancellor of Justice, Mr Risto Hiekkataipale, LL.M trained on the bench, Head of the Department of Government Affairs of the Office of the Chancellor of Justice, attended to the duties for a total of 123 days during the year under review.

The activities of the Chancellor of Justice are primarily reported according to the type of activity. The various sections consist of an overview of the sector and a review of the relevant provisions as well as a report on actions taken and observations made.

The report opens with statements from the Chancellor of Justice and Deputy Chancellor of Justice. They are followed by an overview of the activities of the Office of the Chancellor of Justice and the report then proceeds to describe the actions of the Chancellor of Justice in respect of the Government. The relative powers of the highest central government bodies are also discussed in this section, followed by a section that deals with supervision of the implementation of fundamental and human rights. The section concerning the supervision of legality in central government is preceded by accounts of certain decisions and other opinions of the Chancellor of Justice and Deputy Chancellor of Justice that are deemed to be of general and fundamental importance. This is followed by a section on central government presented according to ministerial purview. The sections concerning central government are followed by a section on legality of supervision in municipal administration and other autonomous branches of government. Supervision of the Bar has also been allocated its own section.

The final section provides statistical data on the activities of the Office of the Chancellor of Justice.

The report concludes with an English translation of the legislation and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice, and an index and a list of the staff at the Office of the Chancellor of Justice.

Helsinki, on the 31st of March 2011

Mr Jaakko Jonkka, Chancellor of Justice

Mr Nils Wirtanen, Secretary General

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Statements

Mr Jaakko Jonkka
Chancellor of Justice

Will recommendations be enough to guarantee the desired level of public services?

Government guidance

In Finland, the principal methods used by the state to steer Local Government welfare services are norm control, resource management and information management. The role of the latter has been deliberately highlighted during the past couple of decades. This development flows from the 1993 reform of the state subsidy system, which lessened the importance of norm control and prompted a transition from cost-based to calculated subsidies. Today, information management is being used in many branches of government, particularly in the fields of social and health care, and education.

By using information management, the state seeks to exert influence by using tools such as guides and recommendations. Information management is generally being used to complement loose framework laws, for example, by providing quality recommendations for the application of legal provisions, but also there seems to be some tendency towards using information management as a replacement for norm control.

There is no scientific data available on the functionality and effectiveness of information management. According to some estimates, its actual impact will depend significantly on how the target of information management adopts the new information. Information management may therefore be primarily useful in strengthening the existing positive approaches. There are some indications that information-based guidance may not necessarily and sufficiently extend to operational planning and decision-making levels.[1] In addition to criticisms concerning practical problems, some legal doubts have also been expressed.

The Parliamentary Audit Committee has summarized its legal doubts about information guidance in the following way (TrVM 5/2008 vp): One of the main problems is that information-based guidance and recommendations are not binding. Some municipalities have acted in accordance with set recommendations; some have taken into account some of the recommendations, whereas other

[1] The National Audit Office report K 14/2007 p. 40-41, and performance audit reports 192/2009 and 221/2011. On the effectiveness of information management at a more general level, also Stenvall-Syvājārvi: Onks tietoo? Valtion informaatio-ohjaus kuntien hyvinvointitehtāvissā. The Ministry of Finance studies and reports 3/2006.

municipalities have not taken into account any of the set recommendations in their service provision. Thus, citizens living in different municipalities cannot be guaranteed their basic rights within the social and health services.

According to the National Audit Office, its observations on health care, education and its funding, as well as the prevention of social exclusion, prove that loose norms, which are complemented by recommendations and other types of information management, will not be able to secure the implementation of the principle of non-discrimination as required by the Constitution.[2]

Information management from the perspective of legality supervision

The supreme guardians of the law have criticised information management in a number of their rulings, including the Parliamentary Ombudsman in his assessment of the provision of care for the elderly (EOA 02/18/2010 No 213/2/09), and the Chancellor of Justice, for example, in his assessment of school health care and student welfare services.

A few years ago, after an audit finding, the Office of the Chancellor of Justice decided to pursue further investigations into the performance of school health care services. At my request, the Ministry of Social Affairs and Health commissioned reports from all of the then county governments, and provided its own opinion. The investigation revealed that the school health quality recommendations issued by the Ministry in 2004 were not actually implemented in any county, and that the level of services offered varied significantly between different municipalities. In my ruling of 13 February 2007 I said that the proper and equal implementation of school health services seems to require a more binding instrument than information guidance (DNR OKV/16/50/2006, Chancellor of Justice Annual Report 2007 p. 71-78).

After this, several comments to the same effect have been made, such as the Parliamentary Audit Committee's report 5/2008 vp, and the State Audit Office performance audit report 192/2009.

Certain current events as well as findings from our own legality supervision activities gave rise to a separate initiative to re-examine the school health care services, and the general student welfare situation beyond that. Towards the end of the year under review, the Ministry of Education and Culture issued a report that I had requested (15 December 2010 DNR 6/022/2010).

The report included the following points: School health care quality recommendations for staff ratios were met in 34 per cent of schools for school nurses and in four per cent for physicians. A third of all schools were entirely lacking doctors' services. A fifth of all schools had no school psychologist or a social worker. In summary, the Ministry said that major differences still exist between schools with regards to student welfare resources and practices, and that resources available for student welfare services are often significantly below the national recommendations.[3]

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2 The National Audit Office report K 15 / 2009 p. 23-27.

3 More detailed information can be found in the Board of Education publication 'Hyvinvoinnin ja terveyden edistäminen perusopetuksessa 2009'. Education follow-up reports 2010:1. - According to reports published by the National Institute for Welfare and Health, and the Board of Education in 2009, the situation in secondary education and vocational training institutions is roughly the same.

Survey results suggest that it is difficult to achieve a desirable level of services by means of information-based guidance. These results are thought-provoking, particularly because there has been a wealth of information in the public domain about children and young people showing symptoms of health problems, and a lot of talk of the need for early intervention. Professor Matti Rimpelä has talked very prominently about the importance of school health care, stating that about one in ten school-age children suffer from a long-term illness. In summary, Professor Rimpelä says that it is common for school-age children to show symptoms of health problems.[4] In recent years, there has been a lot of discussion about students' psychological well-being in particular. For example, according to some estimates 20 per cent of young Finns suffer from mental disorders, and of these about half are in need of juvenile psychiatric assessment.[5]

Fairly recently, statutes and regulations have been issued in order to make school health care requirements more binding on municipalities (Government decree 380/2009, and its provisions on fixed-term health checks came into force on 1 January 2011, and decree 338/2011, which replaced the previous decree coming into force on 1 May 2011). In the Ministry of Education and Culture publication mentioned above, the Ministry had to admit that even though it had been working on a Bill on student welfare, the ministerial working group on educational policy had stated that 'it has not been possible to include in the preparation of the Bill any elements to improve the quality of student welfare, partly for cost reasons' and at this stage, the Bill would remain at preparation stage and not be submitted to Parliament. There are different views on the cost implications of student welfare. The National Audit Office has pointed out that as student welfare services are mostly about problem prevention and early intervention, student welfare services should be seen as an investment rather than as mere expenditure.[6]

Due to the findings in the Ministry of Education and Culture report, I asked the Ministry for a reasoned and concrete assessment by the beginning of August this year on whether the resources and quality recommendation-based guidance municipalities have invested in student welfare services are enough to achieve an adequate and nationally equal level of student welfare, as prescribed in the Basic Education Act (DNR OKV/6/50/2011). At the time of writing this article, the Ministry's new report is not yet available, but in any case it is clear that it should be read in the light of research findings about social exclusion among young people, and the reasons underlying it. For example, youth incapacity due to mental health problems has increased significantly in the 2000s. Researchers emphasise that the prevention and early detection of psychological problems, and early treatment, must be taken much more seriously than before in order to prevent social exclusion.[7] Just as clear-cut an analysis of the situation was presented at the recent Government plenary session: A growing number of young people, without proper management of mental disorders, is falling outside the labour market, a development which represents a significant threat to the national economy.[8]

4 Education follow-up report (mentioned in footnote 3) 2010:1 p. 171.
5 The Government plenary session of 31 March 2011, minutes 23/2011, annex 2.
6 Performance Audit Report 192/2009 p. 89.
7 Raitasalo-Maaniemi: Viisi nuorta eläkkeelle joka päivä. Sosiaalivakuutus 1/2011 p. 34.
8 The Government plenary session of 31 March 2011, minutes 23/2011, annex 2.

Conclusion

Information management certainly has its uses, but our observations in the field of legality supervision support the National Audit Office's conclusion that it does not necessarily always ensure adequate availability of essential services as required by the Constitution.[9] In addition, it should be noted that only the mandatory provisions of law can be monitored and controlled to ensure compliance; in practice, this is not possible for recommendations. On the other hand, even binding rules lose their meaning if there is no effective monitoring and control system in place.

[9] The National Audit Office K 15/2009 and the performance audit report 192/2009.

Mr Mikko Puumalainen
Deputy Chancellor of Justice

Reform of the law on the Chancellor of Justice

Laws applying to the Parliamentary Ombudsman and the Government's Chancellor of Justice are being reformed. The main impetus for the reform is the establishment of a national human rights institution and the respective legal amendment, which will enter into force early next year. The law reform was prepared by the Ministry of Justice working group.

The establishment of a human rights centre in Finland brings a major reform to the Finnish legal system. The centre can, for example, collect and share information on basic and human rights, their implementation and monitoring and consider the entire human rights field. Senior supervisors of legality may also benefit from the centre, for example, when they plan inspections at different authorities and prepare their own initiatives. Supervisors of legality will find equally useful the advisory board, which, following the international founding principles of national human rights centres, will be established as part of the centre. Through the advisory board, supervisors of legality may supplement their knowledge of the reality of human rights work, and inform other bodies about their own work.

The idea of a national human rights centre does not, however, fit entirely naturally into the traditional Nordic landscape of legality supervision. Internationally, the institution of ombudsmen may have different roles. In Finland, the Government's Chancellor of Justice and the Parliamentary Ombudsman, both in an ombudsman-type role, have a traditional Nordic focus. This means that in Finland the job is, first and foremost, supervision of the legality of government activities. The supreme guardians of the law in Finland are not – as opposed to some other countries – general promoters of human rights who cover a wide field, but as prescribed in the Constitution, in their role specifically as supervisors of legality they monitor the implementation of basic and human rights. In Finland, the special delegates – such as the Ombudsman for Minorities, whose job it is to secure the rights and position of a specific group of people – work on a more general basis in promoting human rights. Even after the reform, the monitoring of basic and human rights in private activities will be substantially different from the monitoring of the exercise of public power. This is because, inter alia, the supreme guardians of the law do not have jurisdiction in this area, and the centre is not a monitoring body. For example, to be able to monitor discrimination against people with disabilities

as well as age discrimination outside of public activities, reform would be required to establish a broadly-mandated non-discrimination ombudsman to secure basic and human rights. This should be done promptly after the establishment of the human rights centre. Yet there is more to consider in improving the enforcement of basic and human rights monitoring. At the same time as the reform, and at the Parliamentary Ombudsman's initiative, provisions on the threshold for the investigation of complaints and the legal limitation period for investigations were also amended. These changes came into effect at the beginning of June 2011.

Thus, monitoring and all other operations in the work of an ombudsman are focused on public authorities. However, citizens also play a central role, because the vast majority of an ombudsman's work is based on complaints made by citizens. We can therefore say that the supervisors of legality and the public together monitor the public authorities. The important role of a complainant is also reflected in the fact that even if an individual complaint does not warrant any further action, all complaints will be read and evaluated, and almost invariably they will be replied to. Explaining the matter to the complainant – even if the matter did not give rise to further investigations – is an essential part of the work of an Ombudsman.

It is important to note that a citizen's personal interest in the matter does not, however, dictate how the supervision of legality is carried out. A complaint does not constitute a commission by a complainant to a supervisor of legality (See HE 175/1999 vp). The decision on how a matter is investigated is based on an assessment by the supervisor of legality of whether the actions of a public authority require further investigation. For example, a complaint may lead to a thorough investigation followed by a detailed ruling if the procedures of a public authority were found to be inadequate, even if no concerns over legal protection had been raised. Rulings on complaints only rarely result in legal redress for the complainant. We must remember that a supervisor of legality cannot change the authorities' decisions or, for example, order compensation. That is the job of the court system.

A strong interest in the implementation of due process guides the actions of a supervisor of legality within the limits set for them. In general the authorities have a duty to ensure due process by following the correct procedures set in law. Neglect of professional duties – which a supervisor of legality must address – inevitably also jeopardises the principle of due process. By addressing such neglect, the rule of law is, of course, indirectly promoted.

The aim of the current law reforms is to record and clarify the above-mentioned practices. In addition, they are intended to increase the discretionary powers of the supreme guardians of the law when they look into complaints and decide on appropriate action. These discretionary powers are determined by three important criteria: compliance with the law, legal protection, and implementation of basic and human rights.

At the same time, however, the provisions of law on the obligation to investigate complaints, which is based on section 108 of the Constitution, remain almost unchanged. The Constitution prescribes that the Chancellor of Justice shall monitor the legality of official acts and public performance. The Act on the Chancellor of Justice prescribes that he still has his former duty to investigate a complaint if there is reasonable cause to suspect that a person, authority or other organisation under his competence has acted unlawfully or failed to fulfil their duties, or if deemed necessary for other reasons by the Chancellor of Justice. In other words, even if the new law includes some guiding

principles on discretionary powers in looking into complaints and deciding on appropriate action, all complaints still need to be read and evaluated. In each case, the required action may of course vary considerably.

The new law also reduces the admissibility of complaints from five to two years and records a number of existing practices, including responding to complaints outside of the Chancellor's competence or pending elsewhere.

It is believed that the above will optimise the processing of complaints and improve the service. In addition, there is also a new provision allowing the Chancellor of Justice or the Parliamentary Ombudsman to refer a complaint to another competent authority, if necessary to obtain the best possible result. Previously this was only possible between the supreme guardians of the law, but now extends to other supervisors of legality. From the complainant's point of view, this may mean that they receive a reply to their complaint, for example, from a regional authority, even though they addressed their complaint to the Chancellor of Justice. The Chancellor of Justice will also receive the reply for his information, and may without prejudice take appropriate action. The opportunity to refer complaints seeks to access resources across the entire field of legality supervision. For example, there is a lot of expert knowledge of legality supervision in the field of health and social care as well as some available, tangible sanctions, such as default fines.

When the Bill was considered in Parliament, proposals were made to include settlement and arbitration duties in law. In the end this did not happen, but the Constitutional Law Committee report includes such proposals. Should they have been implemented in law, they would have substantially changed the work of the supreme guardians of the law and, above all, the expectations of citizens of their work. At present, a request for clarification to a public authority from a supervisor of legality sometimes acts as a catalyst for the authority to instigate settlement or arbitration at its own initiative, if such a possibility exists. Instead, if a ruling on a complaint includes a public reprimand, a request for an apology often no longer seems relevant. During parliamentary proceedings, it was not possible to prepare or discuss this in any greater depth. The inclusion of settlement and arbitration duties in the work of the Chancellor of Justice would, however, require an introduction of new and more extensive set of norms. It would not suffice for the law to merely give the Chancellor of Justice an opportunity to suggest such measures in his rulings on complaints.

The basic provisions on the Chancellor of Justice's position, duties and powers have been incorporated in the Constitution of Finland, and the more detailed provisions are now to be found in the relevant Act on the Chancellor of Justice. This is, for the most part, based on previous rules of procedure of the Office of the Chancellor of Justice. In addition to the duties prescribed in the Act, the work of the Chancellor of Justice includes other important activities. For example, the Chancellor of Justice performs a preliminary review of Government decision agendas, which is an essential tool for government oversight, and based on a long-established practice, but does not appear in the Act (see, for example, in this report, "Review of presentation agendas", p. 31-36). Similarly, the supervision of ministerial activities outside of the Government's decision-making activities, as prescribed in section 108 of the Constitution, does not appear explicitly in the Act on the Chancellor of Justice. The Chancellor of Justice's duty to issue information and opinions on legal matters to the President, ministers and ministries will also be solely based on the Constitution.

The Chancellor of Justice is an independent and autonomous supervisor of legality. Credibility and confidence in the objectivity of the Chancellor of Justice form the key basis of his position. An essential, if not fully sufficient, condition is that the basic provisions on the Chancellor of Justice's position, duties and powers are incorporated in the Constitution of Finland, and the more detailed provisions are to be found in the relevant Act. Everything does not, of course, need to be written down in great detail, because a certain degree of flexibility should also be retained. At the time of the next law reform, however, it may be appropriate to consider whether the Act on the Chancellor of Justice should include in more detail some of the established practices that are now based solely on the current Constitution.

On Non-Discrimination

My statement in last year's report (Prohibition of discrimination within supervision of legality of the application, the Chancellor of Justice of the Government Annual Report 2009, p. 13-17) dealt with the importance of non-discrimination legislation in the supervision of legality, including complaints relating to non-discrimination issues that I had encountered in my rulings to date. I considered problems of interpretation arising from the lack of uniformity of non-discrimination legislation, which had manifested themselves in my rulings and which I had tried to clarify. In some rulings, discrimination had been based on place of residence. These included rulings on the basis and amount of licensing rates for market traders in a municipal market place (OKV/339/1/2006) as well as municipal employment decisions (OKV/150/1/2008). In both cases the decisive factor was that they fell under the application of the Non-Discrimination Act, which provides a stricter prohibition on unequal treatment than the Finnish Constitution. There are no acceptable criteria for direct discrimination, and any exceptions are expressly and strictly regulated.

After I had written my article in June 2010, I resolved a similar case in which a municipal resident had received favourable treatment in a comparable situation. The Non-Discrimination Act was not applied in that case. When considering a basis to resolve the matter – that is, what acceptable justification to allow such treatment might exist – I reviewed the Constitutional Law Committee's interpretations of the Act, amongst other things. As a result, I ruled that the municipality had not discriminated against the complainant. The complainant was a summer resident in the municipality and had had to pay double for mooring in comparison to permanent residents. A summary of the ruling (OKV/684/1/2008) is included in this report.

The Parliamentary plenary session of 10 March 2011 (PTK 169/2010 vp) debated our 2009 report and inter alia considered the relationship between the Constitution and the Non-Discrimination Act and the privileged position of permanent residents in certain situations. The same question was raised in the Constitutional Law Committee's report (PeVM 14/2010 vp – K 18/2010 vp). These discussions referred to my article and highlighted that residents may be put in different positions in a comparable situation. This of course is correct, and the case mentioned above is an example of this. Had the case been resolved under the Non-Discrimination Act, however, the end result would quite obviously have been different. The legal assessment of the mooring case is in line with what the Constitutional Law

Committee records in its report, but it also confirms the views I expressed in my article regarding dilemmas in the current non-discrimination legislation.

The role of the European norms is significant for Finnish non-discrimination legislation. The set of norms is constantly evolving, based on new legal instruments and dynamic application practice. This topic is more and more important in today's society, and it is a legally challenging one. Changing and fragmented regulatory practice, however, makes it even more challenging for administrators of law to apply. In April, the European Union Agency for Fundamental Rights and the European Court of Human Rights published a useful handbook on the practical application of European non-discrimination norms. Such publications are an important practical tool.

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Overview

Duties

Provisions concerning the duties of the Chancellor of Justice and his key powers appear in Chapter 10 of the Constitution of Finland. The Constitution also mentions the Deputy Chancellor of Justice and his or her substitute, to whom the provisions on the Chancellor of Justice apply insofar as appropriate.

The Act on the Chancellor of Justice of the Government (193/2000) contains provisions concerning the methods of execution of supervision of legality by the Chancellor of Justice, the admissibility and investigation of matters, the measures available to the Chancellor of Justice, the right of the Chancellor of Justice to executive assistance and information, the power of decision by the Chancellor of Justice, as well as fundamental provisions regarding the Office of the Chancellor of Justice and certain other provisions.

The Government Decree on the Office of the Chancellor of Justice has been issued pursuant to the Act. More detailed regulations governing the organisation and officials of the Office of the Chancellor of Justice as well as the resolution of matters by the Office of the Chancellor of Justice have been issued in the Rules of Procedure adopted by the Chancellor of Justice. English translations of the legislation and regulations concerning the Chancellor of Justice and the Office of the Chancellor of Justice are appended to this report (appendices 1–6).

Supervision of the Government

Under the Constitution, the Chancellor of Justice is tasked with supervising the legality of the official acts of the Government and the President of the Republic. The Chancellor of Justice must attend government plenary sessions as well as presidential sessions, in which matters are put before the President of the Republic. However, his presence is not a judicial prerequisite to decision-making by the Government or the President of the Republic. In practice, the Chancellor of Justice or his deputy or substitute is always present at such sessions.

Provisions on the measures available to the Chancellor of Justice in the exercise of his supervisory duties are laid down in the Constitution and the Act on the Chancellor of Justice of the Government. In practice, the focus of supervision of the Government is on advance supervision. This is achieved by the Chancellor of Justice reviewing the presentation agendas, including appendices, of government plenary sessions and presidential sessions. The chancellor also reviews the memoranda submitted by the Government to Parliament in matters related to the European Union. The Department for Government Affairs is the unit of the Office of the Chancellor of Justice responsible for preparation of the matters referred to herein.

Supervision of the Government is discussed in greater detail in Section 3 of this report.

Issuing opinions

Issuing opinions is closely related to the supervision of the Government discussed above. According to the Constitution, the Chancellor of Justice must, upon request, provide the President of the Republic, the Government and ministries with information and opinions on legal issues. Opinions are mainly requested directly by ministries. Although usually issued in writing, opinions may in some cases also be provided orally.

In addition to opinions referred to in the Constitution, the Chancellor of Justice's opinion is often requested when new legislation is being drafted, particularly in the fields of criminal, procedural, administrative or constitutional law. Although compliance with such requests is left to the chancellor's own discretion, he aims to give an opinion, particularly on points of legislation that may have important implications for the supervision of legality.

Supervision of fundamental and human rights

Under the Constitution, the Chancellor of Justice must also monitor the implementation of fundamental rights and liberties and human rights. In practice, this obligation is observed in all fields of activity: in supervision of the Government and other supervision as well as the handling of complaints and the initiation of investigations.

Supervision of human rights is based on international human rights conventions binding on Finland. The Convention for the Protection of Human Rights and Fundamental Freedoms – the European Convention on Human Rights – is a key instrument in this respect, along with conventions that are of more restricted scope and which address issues such as discrimination or the rights of the child.

In its report concerning fundamental rights reform (PeVM 25/1994 vp), the Constitutional Law Committee of Parliament proposed that the relevant supervisors of legality – the Chancellor of Justice and the Parliamentary Ombudsman – include in their annual reports on activities a dedicated section on the implementation of fundamental and human rights.

Prosecutorial duties

The Chancellor of Justice serves as a special prosecutor in matters within the purview of his supervision of legality, particularly judicial offences in office. A decision to bring charges against a judge for unlawful conduct in office forms a subsection of these offences, as they are separately cited in the Constitution. The decision to bring charges against a judge for an offence in office is taken by the Chancellor of Justice or the Parliamentary Ombudsman. Courts of appeal must notify the Chancellor of Justice of any facts of which they have become aware that may result in official charges being brought in a court of appeal. The police must forward to the Chancellor of Justice any police reports involving alleged offences in office by judges.

The supreme judicial authority in Finland is the Prosecutor-General, the duties of whom include the general leadership and development of the prosecutor service, as well as the supervision of prosecutors. Complaints regarding the Prosecutor-General's duties are transferred to the Chancellor of Justice. During the reporting year, one complaint was transferred.

Investigation of complaints

One of the ways in which the Chancellor of Justice monitors the legality of the activities of authorities and other public officials is by dealing with complaints lodged against them. Both private individuals and organisations who consider that a person, authority or other organisation within the supervisory ambit of the Chancellor of Justice has acted unlawfully or failed to fulfil their duties may lodge a complaint with the Chancellor of Justice. A total of 1 843 such complaints were filed in 2010.

The Chancellor of Justice must investigate a complaint if there is reasonable cause to suspect that a person, authority or other organisation has acted unlawfully or failed to fulfil their duties, or if deemed warranted for other reasons by the Chancellor of Justice. The Chancellor of Justice is entitled to approach any authority for information and documents considered relevant to the investigation.

The Chancellor of Justice will not investigate a complaint lodged more than five years after the alleged infringement has taken place, unless there are special grounds for doing so. However, since the time limit is not absolute, cases of exceptional gravity or importance may be investigated irrespective of the time that has elapsed between the infringement and the lodging of the complaint. Under the above provision, 40 complaints were abandoned in 2010. The law reform, which entered into force on 1 June 2011, shortened the limitation period for complaints from five years to two years.

As in previous years, the Office of the Chancellor of Justice received numerous telephone enquiries from private individuals regarding a wide range of topics during 2010. Individuals have made queries regarding their own affairs, and as citizens on topical public issues. The office is able to advise on matters regarding the Chancellor of Justice's powers, how to lodge a complaint with the Chancellor of Justice and how complaints are handled. If an enquiry falls outside the scope of the Chancellor of Justice's remit, then the office should advise whom the individual should contact instead. Enquiries outside the Chancellor of Justice's powers have most commonly been matters of private law.

Review of penal judgments

According to the Act on the Chancellor of Justice, the Office of the Chancellor of Justice has the right to review penal judgments imposed by courts of law. For this purpose, the office receives notifications of decisions on sentences and their enforcement. Actions taken on the basis of these documents are described in greater detail on page 85.

Supervision of the Bar

The Chancellor of Justice's duty to supervise the actions of advocates, i.e. members of the Finnish Bar Association, is based on the Advocates Act. The said Act is mentioned in the Act on the Chancellor of Justice of the Government. Supervision takes the form of reviewing the decisions taken by the Board of the Finnish Bar Association in matters concerning its supervisory duties and fee disputes, including consideration of appeal, and investigating complaints pertaining to advocates.

Supervision of the Bar is discussed in greater detail on page 107 of this report.

Division of duties between the Chancellor of Justice and the Parliamentary Ombudsman

The division of duties between the Chancellor of Justice and the Parliamentary Ombudsman is provided for in an Act of Parliament (the Act on the Division of Duties).

The act enumerates the matters, which the Chancellor of Justice must transfer to the Parliamentary Ombudsman for consideration unless he deems their resolution by the Office of the Chancellor of Justice expedient. As a rule, matters transferred concern: 1) the Defence Forces, Border Guard and peacekeeping forces as well as matters concerning military court proceedings; 2) apprehension, arrest, detention and travel bans referred to in the Coercive Measures Act as well as matters pertaining to taking into custody and other deprivation of liberty; and 3) matters pertaining to prisons and other facilities where persons have been committed against their will. Complaints lodged by inmates and other detainees are also transferable matters, while matters pertaining to the supervision of the Government shall not be transferred to the Parliamentary Ombudsman even in respect of the Ministry of Defence.

Pursuant to the Act on the Division of Duties, the Chancellor and the Ombudsman may agree on a transfer of a matter if such transfer can be expected to facilitate dealing with the matter or when transfer is justified for other particular reasons.

During the year under review, a total of 61 complaints were transferred to the Chancellor and 30 to the Ombudsman.

The year in figures

The figures below represent the activities of the Office of the Chancellor of Justice during the year under review (corresponding figures for 2009 in parentheses).

During the year under review, the Office of the Chancellor of Justice received 1 843 (1 762) complaints and resolved 1 853 (1 748) complaints. In all, 19 (14) matters were taken under investigation on the Chancellor's own initiative and 108 (94) matters became pending as a result of the review of penal judgements.

The number of decisions involving measures in respect of complaints was 201 (176), equivalent to 17% (16%) of all admissible complaints (1 160). The median resolution time of all complaints was approximately 6,9 (6,8) weeks and the average resolution time was approximately 26,8 (27,8) weeks.

A total of 37 matters taken under investigation as a result of supervision of the courts led to action being taken. A total of 6 368 penal judgments were submitted for review.

In all, 52 (52) written opinions were issued to the President of the Republic, the Government and the ministries.

At the end of the year under review, 1 165 (1 125) cases remained pending.

Statistical data on activities is presented in Section 9.

Cooperation and visits

International cooperation

Consulting official Ms Marja Leskinen gave a presentation on the work of the Office of the Chancellor of Justice to a Nepalese delegation on 25 February 2010.

The Deputy Chancellor of Justice Mr Mikko Puumalainen attended meetings of the Management Board of the European Union Agency for Fundamental Rights in Vienna on 7 May and 28 May 2010.

The Deputy Chancellor of Justice attended the meeting of Finnish, Swedish and Estonian Chancellors of Justice in Stockholm on 17 September 2010.

The Deputy Chancellor of Justice attended the European Conference of the General Assembly of the International Ombudsman Institute in Barcelona between 4 and 5 October 2010.

Secretary General, Mr Nils Wirtanen gave a presentation on the activities of the Office of the Chancellor of Justice to Nordic law students on 5 October 2010.

The Deputy Chancellor of Justice gave an introduction to the activities of the Office to observers of the European Council municipal and regional government on 2 December 2010.

Other activities

Organisation and staff

The Office of the Chancellor of Justice comprises three departments: the Department for Government Affairs, the Department for Legal Supervision and the Administrative Unit. The Secretary General of the Office heads the Administrative Unit, while the other two departments are both headed by a referendary counsellor. Exercising the decision-making power vested in the Chancellor of Justice, the Chancellor of Justice and Deputy Chancellor of Justice are outside the departmental division. Decisions concerning the placement of officials within the departments and unit are made by the Chancellor of Justice.

Detailed provisions regarding the organisation and the tasks of the units can be found in the Rules of Procedure of the Office of the Chancellor of Justice. The Department for Government Affairs deals with matters concerning the supervision of the Government and prepares opinions related to this function. This department is also responsible for the supervision of the Bar and public legal aid counsels, as well as for international matters in respect of legality supervision organisations and fundamental and human rights as well as issues related to the preparation of EU affairs at a national level. The Department for Legal Supervision is responsible for the investigation of complaints, the supervision of courts of law and other legality supervision not falling within the ambit of the Department for Government Affairs. The Department for Legal Supervision also deals with actions against officials of the court system and the review of penal judgments, prepares the opinions issued in its particular sector and provides assistance in matters pertaining to the supervision of the Government and in certain specified international matters. The Administrative Unit deals with internal administration, financial affairs, employee training and information and media services. It also edits and publishes the annual report and deals with matters pertaining to international cooperation not within the ambit of either of the above departments.

Further details on the division of duties between the Chancellor of Justice and Deputy Chancellor of Justice, duties of officials and their locums, resolution of matters and the board of the office may be found in the Rules of Procedure of the Office of the Chancellor of Justice.

At year-end the office had a total of 37 employees. In addition to the Chancellor of Justice and the Deputy Chancellor of Justice, 19 officials occupied public service employment posts requiring a higher legal degree. During the year, as a result of resignations, the Office of the Chancellor of Justice appointed two new officials, an IT consultant and a consulting official, all in permanent posts. Four people were appointed to temporary posts as substitutes. In addition, the Office of the Chancellor of Justice also employed two student law trainees, one from the University of Helsinki and the other from the University of Turku.

A list of the staff at the Office of the Chancellor of Justice is appended to this report.

3

The Chancellor of Justice and the Government

General

The Constitution divides supervision of the legality of Government decisions as performed by the Chancellor of Justice into two categories judicially and in terms of the method and timing of execution. The focus of the supervision of the Government by the Chancellor of Justice and the work of the Department for Government Affairs in assisting the chancellor is on advance inspection and supervision of matters being prepared by ministries and of those that, once preparatory work has been completed, are submitted to Government plenary sessions or the President of the Republic for a decision. The aim is to take measures in advance to ensure that decision-making by the Government and the President of the Republic in the Government is in conformity with law and that Government bills brought before Parliament meet the various basic legal requirements and can thus be presented to Parliament.

The duty of the Chancellor of Justice to perform advance supervision of the Government is based on Section 108 of the Constitution. The Constitution does not lay down detailed provisions regarding how advance supervision is to be carried out, nor are there detailed provisions in the Act on the Chancellor of Justice of the Government. Since the Chancellor of Justice supervises matters prepared by the relevant ministries and forwarded for decision-making, how supervision is carried out in practice is dependent on the matter in question and the factors before the ministry in question. To the outside world, the most visible aspect of Government supervision is the weekly advance review of the agendas for presentation of bills and proposals to be submitted to plenary sessions and presidential sessions. This is covered in greater detail later in this report. Fewer in number, but more challenging in terms of the time and legal expertise and attention required, are requests for a legal opinion on matters to be submitted to the Government or those related to Government decision-making made by ministerial rapporteurs and members of the Government, to which the Chancellor of Justice has the power and duty to respond under Section 108 (2) of the Constitution.

The Chancellor of Justice's power of supervision of the lawfulness of the decisions made by the Government and the President of the Republic is based on Section 112 of the Constitution. In 2010 there were no matters pertaining to the lawfulness of decisions by plenary sessions of the Government or by the President of the Republic as referred to in Section 112 of the Constitution.

Under Section 108 of the Constitution, the first task assigned to the Chancellor of Justice is the duty to supervise the lawfulness of the official acts of the Government and the President of the Republic. Based on long-term practice, it is recorded in the detailed grounds of Section 108 of the Constitution (Government bill 1/1998 vp) that the importance of supervision of the legality of the official acts of the Government and the President of the Republic is emphasised by overall responsibility being entrusted to the Chancellor of Justice. The supervision of the Government

also covers Government plenary sessions and the Ministries and their officials. Under Section 58 of the Constitution, the President of the Republic takes decisions in the Presidential session of the Government on the basis of proposals for decisions put forward by the Government. Therefore the supervision of legality performed by the Chancellor of Justice is targeted specifically at Government plenary sessions and matters considered therein either for final decision or for forwarding as proposals to the President of the Republic.

In accordance with the detailed grounds of Section 108 of the Constitution, the provision of information and opinions on legal issues to the President, the Government and the ministries referred to in Section 108 (2) of the Constitution remains an important area of the Chancellor of Justice's activities. It constitutes one of the core duties (together with complaints) imposed on the Chancellor of Justice by the Constitution. Legal opinions and statements and discussions with ministry representatives responsible for the preparation of matters is to examine, in advance, the relevant legal issues and the legality of the actions taken by the ministry in order to ensure that there will not be any legal obstacles preventing a decision and that the proposal for a decision, or the grounds on which it is made, will not need to be supplemented or corrected immediately prior to decision-making.

There is no prescribed procedure for the submission of requests for a review by the Office of the Chancellor of Justice. Every effort is made to provide a response to inquiries regarding matters to be presented to the Government promptly enough to prevent any delay in the processing of the matter. To this end, matters are often discussed and responses provided by telephone to the Ministry concerned. Telephone discussions also offer an opportunity to mutual consideration of matters between the Chancellor and ministerial rapporteurs.

E-mail is increasingly used, providing a rapid means of communication and allowing the Chancellor of Justice and officials access to all the relevant documents as attachments. This expands the knowledge base available for assessment and shortens processing times. In cases where a ministry's rapporteur is provided with a previously established opinion regarding Government practice, the information is provided by an official of the Department for Government Affairs. Other requests for an opinion are referred to the Chancellor of Justice.

In response to requests for opinions on more significant legal issues, the Department for Government Affairs draws up memorandum which, following the Chancellor of Justice's approval, is delivered to those requesting the opinion. The responses provided to requests for opinions regarding Government affairs and the most significant observations from inspections concern the same issues as in previous reports.

In addition to legal issues related to matters submitted to Government plenary sessions and Presidential sessions, requests by ministries for an opinion or statement also pertained to individual issues subject to a ministerial decision or decree.

Complaints relating to governmental affairs are quite often anticipatory in nature. They may involve legislative initiatives being prepared by a ministry or about to be submitted to the Government. A new feature of the complaints made regarding the Government and its individual members seems to be that they often arise from a current issue widely reported in the media. Such complaints are characterised by the fact that they are almost always submitted by email and several similar complaints are received on the same day. Such emails are usually based on a newspaper article and

ensuing, lively polemic debate on social media where strong viewpoints are typically expressed. These debates characterise the authorities' decision-making or motives as clearly unlawful, and as such, unreasonable for society as a whole. When these types of complaints are being looked into and rulings prepared, it is essential that we have all legally relevant claims and issues on the table for evaluation, especially from the perspective of supervision of legality. As these types of complaint do not generally relate directly or indirectly to the complainant, there is often no relevant documentation attached, and little by way of "factual information" is included. Or we may find that the complaint consists of mere arguments or unsubstantiated claims. Examples of this type of complaint in the current reporting period include six complaints about the appointment of the Ombudsman for Minorities and exemption from formal qualifications, and five complaints on share acquisitions by the spouse of the Minister of the Environment, Paula Lehtomäki and the alleged disqualification of the Minister.

2010 included the last parliamentary session of the previous election period. For the Government this meant that during the autumn of 2010, and especially towards the end of the year, it submitted to Parliament budget Bills and other Bills that had been prepared by Government over a long time and which the Government wanted to see make progress. Many of these proposals, which had been prepared by different ministries, had wide-ranging and significant effects on basic rights and liberties and other legal issues. Some of the Government Bills submitted to Parliament at the end of the term had been prepared to a very tight schedule and they were, in certain respects, very goal-oriented, which did not allow much time for evaluation of the need for new legislation or the development of alternative methods of regulation. The lack of preparation time and alternatives was also reflected in the fact that the Government's preambles to the Bills tended to be very short.

In 2010, Government plenary sessions handled a total of 1 676 matters (1 680 in 2009), and the President of the Republic made 914 (920) decisions at presidential sessions. The number of Government plenary sessions totalled 72 (67) and presidential sessions 44 (36). During the reporting year, the Government submitted to Parliament 333 presentation agendas and 56 (93) memoranda on matters related to the European Union.

The Chancellor of Justice or the Deputy Chancellor of Justice or his substitute was, as provided under Section 111 (2) of the Constitution, present at Government plenary sessions and presidential sessions. They were also present at Government negotiations and evening sessions.

The Head of the Department of Government Affairs at the Office of the Chancellor of Justice, Mr Risto Hiekkataipale, continued in his role as the appointed substitute to the Deputy Chancellor of Justice. The annual number of days spent in his substitute role came to a little over one hundred. To the legal supervision of the Government was during this time also appointed a referendary councellor or other officer of the Department of Government Affairs.

Decisions of the President of the Republic in the Government

The 2001 report includes a more extensive description of the legal framework for presidential and Government decision-making and the implementation of the decision-making procedures under Section 58 of the Constitution. During 2010, there were no occasions on which the President did not accept the solution proposed by the Government, and therefore no decisions were taken pursuant to the decision-making procedure under Section 58(2) of the Constitution.

During the year under review, the Office of the Chancellor of Justice did not handle any matters concerning military orders or other matters referred to in Section 58(5) of the Constitution.

In 2010, the President of the Republic resolved all matters proposed by the Government immediately, without any request for an opinion provided for under Section 108(2) of the Constitution.

In the ordinary course of reviewing presentation agendas, the due exercise of powers is always considered. The relevant legal basis for the use of powers by the highest organs of Government is also checked. No particular problems of interpretation have occurred in this context. In some cases, we have had to request that a missing reference to a specific rule of jurisdiction be added to the Government's presentation agenda, or that a paragraph or a citation regarding the Government or President's powers be added in the presentation memoranda.

Review of presentation agendas

For the purpose of the examination of Government affairs, the Chancellor of Justice and the Department for Governmental Affairs at the Office of the Chancellor of Justice receive all the presentation agendas of Government plenary sessions and presidential sessions in advance. The presentation agendas are distributed using the Government Decision Support System (PTJ), which is an electronic system for documenting Government sessions. This provides the Chancellor of Justice with access to the presentation agendas of Government plenary sessions and presidential sessions simultaneously with members of the Government, which is usually on the Tuesday preceding the plenary session. This means the Chancellor of Justice examines agendas already distributed to the Government, allowing very little time for the review of the presentation agendas for Government plenary sessions and presidential sessions. In particular, Government bills regarding finance and expenditure laws, which are submitted in the autumn, and proposals related to the national implementation of European Union law are legislative issues with specific time limits. In previous reports attention has been drawn to the lack of time available for drafting and the shortage of staff to handle preparatory work in ministries with sufficient expertise and experience, and to the fact that Government bills do not always meet the technical or substantive requirements for high quality drafting. Such observations, if made in the middle of the term, are generally related to legislative proposals on large-scale administrative reforms and reorganization of administration, where the preparation time is relatively short, when compared to the scale and impact of the project, and implementation of the project may be tightly regulated. Towards the end of the parliamentary term, however, as in 2010, such shortcomings were usually due to the different ministries' need to submit long-prepared or urgent Bills to Parliament even at the risk that Parliament might not even have time to deal with all major Bills before the next election, in which case the Bill lapses.

If the submission of a proposal cannot be postponed, the Office of the Chancellor of Justice checks that the proposal meets the basic requirements for a Government bill and can therefore be brought before Parliament within the prescribed time period. The Chancellor of Justice has no legal means to require the complete withdrawal of a proposal with technical deficiencies or prepared on insufficient grounds. Similarly, the final review of the requirement for legislation falls within the remit of Parliament, which decides on the final content of the Act.

Presentation agendas for Government plenary sessions must be distributed via the PTJ system by 11am on Tuesdays. Any errors or defects in presentation agendas should be corrected as and when they are discovered during the review. A regular Government presentation agenda review meeting between the Chancellor of Justice and the Head of the Department of Government Affairs at the Office of the Chancellor of Justice or another official is held every Wednesday at 1pm, at which all of

the items on the presentation agenda for the following day's session are reviewed. Even at this stage legal issues or defects in the agendas may come up that require action from a ministerial rapporteur. As in previous years, during this reporting year the rapporteurs removed certain items from the weekly session because of the severity of the errors or defects identified.

Issues reviewed

The number of new statutes, amendments and Government bills regarding new legislation on which Government plenary sessions and the President of the Republic were required to make decisions has remained quite high. As a concrete example, I might mention that during the last session of Parliament and the submission of the last budget Bills in the autumn of 2010, there was a 30 centimetre pile of statutory material per week (in the Finnish language) for the Government and President to review and decide upon.

No amendments were made to the Constitution, the Act on the Chancellor of Justice of the Government, the Government Act or other legislation pertaining to the principles or subjects of supervision by the Chancellor of Justice during the year under review. Government affairs cover such a wide variety of subjects that specialised professional expertise and the ability to work quickly are required from those reviewing agendas. Given the number of legal staff at the Department for Government Affairs at the Office of the Chancellor of Justice (the Head of Department plus three other lawyers), all those working on supervision of the Government are required to be able to perform all the duties related to agenda reviews and other supervision of the Government. The requirement is particularly the case during times when the Head of the Department of Government Affairs is acting as substitute for the Deputy Chancellor of Justice. The year under review proved to be challenging for staffing levels at the Department of Government Affairs of the Office of the Chancellor of Justice: the consulting official of the Department of Government Affairs resigned in the spring of 2010, and a junior legal adviser who had been looking after Government supervision took a leave of absence at the same time.

As was the case in the previous year, particular attention was paid to the order of enactment of Government bills presented to Parliament. Since the 1995 constitutional reform and the entry into force of Finland's new Constitution, the review process has not been about a technical examination of the order of enactment pertaining to bills, but rather a review of the content of bills and their individual provisions to ensure that they, and the grounds on which they are based, meet the requirements of fundamental rights implementation and that, where a bill is closely related to fundamental rights, the consideration of fundamental rights meets the requirements set for Government bills.

Opinions of the Constitutional Law Committee have also been employed in the review of the order of enactment of Government bills. Government bills are reviewed with a view to ensuring that where appropriate, they address the bill from the perspective of fundamental rights and human rights provisions. The general grounds for more extensive legislative reforms contain a chapter on the implementation of basic and human rights. Individual provisions of bills need to be addressed and assessed with regard to their relationship with the fundamental rights under Chapter 2 of the

Constitution. In reviewing bills, attention is paid to the specificity and circumscription of provisions pertaining to the basis of the rights and obligations of the individual and the power to issue decrees. If it is not possible to refer to an opinion issued by the Constitutional Law Committee of Parliament in the grounds regarding an issue, the issue must be assessed more thoroughly in the grounds for the bill. If the issue is new and to an extent open, the grounds for the bill must include a mention that the opinion of the Constitutional Law Committee will be obtained.

Presentation agendas concerning international treaties and conventions sometimes require an opinion on whether Parliament should be involved in their ratification. During the year under review, the national implementation of international agreements was delayed in a few cases well beyond the time deemed acceptable.

Matters pertaining to Parliament's replies to Government bills are usually unambiguous and clear. As previously, the observations made mainly concerned deficiencies and inaccuracies regarding the date on which an Act entered into force which, had they not been corrected, might have resulted in difficulties in the implementation and application of the act. One reason for these inaccuracies, comparatively minor in themselves, but had they been passed into law would have had major implications, is the increasingly common practice of using one official to present Parliament's response and a different official to prepare the Government bill. This practice is particularly noticeable towards the end of the year

The number of inaccuracies, observations on the types of inaccuracies, the competence and performance of staff in handling these issues and staff structure, which may also contribute to these inaccuracies, as described on page 29 in the 2008 Report of the Chancellor of Justice, apply also to 2010. The responsibility partly lies in the types of work carried out by different Ministries, which require sufficient expertise for each particular task and an efficient system of cover for absent staff.

Examination of the substance of the norms of Government decrees is more thorough than that applied to Government bills, because correcting any errors after a Government decision would require an amendment to the decree in question. Under Section 80 of the Constitution, specific authorisation is required for the issue of decrees. The review process also involves checks to ascertain that the level of statute selected for the matter is correct and that Government decrees do not contain matters on which provisions should be laid down in an Act. Supplementation of provisions regarding the authorisation to issue decrees is usually not about erroneous conduct by a ministry's rapporteur but, at least to a certain extent, about differences in views regarding the substance requirements of provisions delegating legislative powers.

The year under review also saw proposals for amendments to Acts presented by Ministries to make more specific some earlier Acts, some enacted years ago, which included incomplete or insufficiently specific authorisation to issue decrees; as well as some proposals for amendments to take provisions issued at decree level at the level of an Act. In particular, changes in the level from decree to Act have taken place in the context of a comprehensive legislative reform of an administrative branch.

When examining appointments to public office, the Office of the Chancellor of Justice checks that the process is open and the procedure is conducted in the appropriate manner. In addition to the qualifications and expertise required for the position, the Office ensures that the proposed appointment is based on an objective and appropriate assessment of expertise and a comparison

on merit between the applicants. The Office of the Chancellor of Justice and the Government do not usually have access to the application documents. Therefore presentation memoranda regarding appointments to public office must be consistent and drawn up to allow it to be verified, on the basis of the memorandum and curriculum vitae details, that the most suitable and best qualified applicant is appointed to the office. Decisions on appointments to public office call for careful consideration and deliberation between those shortlisted for the office, particularly in cases where provisions regarding the competence requirements are less specific or the post covers a broad remit. Such consideration and deliberation is part of the preparatory process pertaining to the filling of a public office, but the legal requirement that must be observed in this case is that the consideration and deliberation is based on issues that are objective and significant to the decision and that all essential factors are openly documented. In cases where a complaint is lodged, and in some other, individual cases, the Office of the Chancellor of Justice has obtained access to the application documents before the resolution of matters pertaining to appointments to public office.

Regarding candidates for office under Section 26 of the Act on Civil Servants, the Office of the Chancellor of Justice checks that they have submitted a statement of liabilities as prescribed in Section 8a, and that the Ministry preparing the presentation for the appointment has evaluated the contents of the statement with regards to the duties of the office. Usually the candidates themselves notify the relevant Ministry if they hold positions they should need to give up if they were to be appointed to the office. Potential conflicts of interest have usually been settled prior to the presentation, so that these questions require no further consideration when decisions on appointments to public office are being made.

As far as ministerial changes are concerned, a commendable procedure has been adopted, whereby the possibility of a candidate holding any outside position concurrently with ministerial office is considered in advance. Should any such position become apparent, the candidate has the option of resigning from it or withdrawing their candidacy for ministerial office. Such advance assessment should remove any potential for disqualification. In rare cases, a Minister has retained a position held prior to their ministerial appointment, only to discover that such position disqualifies them from making a particular decision.

Compliance with the 40% quota requirement laid down in the Act on Equality between Women and Men, Section 4(2), in central Government committees, advisory boards and other corresponding bodies was monitored as prescribed, as was the equality objective under the Act on Equality between Men and Women, Section 4(3), in other bodies that have a legislative power of decision but are not subject to the quota requirement. The fact that when appointments for multi-member committees are made, only very rarely is there a need to refer to the special reasons described in the Act on Equality between Women and Men, Section 4, would indicate that the legal 40% quota requirement is generally being met. Application of the quota requirement as prescribed in the Act on Equality between Women and Men has been somewhat problematic in certain situations, such as appointing officials to broadly-based bodies that prepare aid programmes between the EU and other countries, when the Finnish Government only has the power to appoint its own representatives. Problems have also been encountered in applying the rule to a body as a whole when the Government plenary session only has the power to appoint some of its members.

When considering whether high-ranking ministerial officials should be members of governing bodies of agencies and unincorporated state enterprises of their administrative branch, particular consideration is given to ascertaining that the independence and impartiality required in Government activity and public servant's liability for acts in office are realised. With regard to membership of the governing bodies of incorporated state companies and associated companies, the transfer of central Government ownership steering issues to one ministry that is as independent as possible from such companies was a major reform. In addition to the above, attention is paid to the independence of expert members of boards and committees serving as statutory appeal bodies in fields including pension insurance and social security issues as well as those of the administrative and special courts.

Supervision of the Government in EU affairs

Under section 96 of the Constitution, the Parliament considers those proposals for acts, agreements and other measures which are to be decided in the European Union and which otherwise, according to the Constitution, would fall within the competence of the Parliament. The Government shall, for the determination of the position of Parliament, communicate a proposal to Parliament by a communication of Government, without delay, after receiving notice of the proposal.

During the review of Government presentation agendas, and regarding the above-mentioned communications, particular attention has been drawn to the proper and immediate submission to Parliament of proposals for legislation and agreements to be decided in the European Union for the determination of Parliament's position, as required under section 96 of the Constitution. As the legal basis of a proposal plays a vital role in the determination of the separation of powers between the EU and the individual member states, it must be clearly stated in the memoranda annexed to Government communications. Any ambiguity concerning the separation of powers must also be considered, as well as the Government's position on the legal basis. Memoranda annexed to the communication must also include the Government's position on the statute or agreement proposal. The Government's position must be indicated in the memoranda even if the position is only preliminary.

Where there are problems related to the timeliness or content of communications, the time constraints set in Section 96 of the Constitution only allows for limited intervention by the Office of the Chancellor of Justice. As the participation by Parliament in the national drafting of EU affairs demands that Parliament be provided with information without delay, no extensive modification of communications and related memoranda to be submitted to Parliament was required in the review of presentation agendas of Government plenary sessions. Instead, any necessary additional information was obtained orally so as to prevent further delay.

Some rulings related to supervision

The following matters are included as examples of the measures taken by the Chancellor of Justice in the context of the supervision of Government and legal questions related to the Government's actions.

Adoption of an act – decision on the date of entry into force

The Government plenary session had the Parliament's response to a Government proposal on its agenda. The Parliament had approved the date of entry into force of the proposed Act. The Government session presentation agenda, however, included an error stating that the Government was to propose that the President of the Republic decide on the date of entry into force of the said Act. The Government made a decision in accordance with the presentation. The error was picked up at the review of the presentation agenda for the Presidential session. The presentation agenda on its way to the Presidential session was removed and the Government's erroneous decision was rectified at a subsequent Government plenary session.

In his ruling, the Chancellor of Justice said that according to section 79(3) of the Constitution, an Act shall indicate the date when it enters into force. The Parliament may make a decision on the implementing provision during the parliamentary reading of the Bill. The Parliament may also leave the implementing provision undecided, in which case the President shall decide the date of entry into force, in accordance with section 77 of the Constitution, at the same time as the adoption of an act. The Chancellor of Justice stated that the decision on the time of entry into force of an act is a significant part of the legislative procedure as regulated by the Constitution. It is not possible to make a new decision on the time of entry into force that has already been passed by the Parliament, because it constitutes a declaration of Parliament's intent in which the President of the Republic does not have the right to intervene.

The Chancellor of Justice also noted in his ruling that according to section 118(2) of the Constitution, a rapporteur shall be responsible for a decision made upon his or her presentation, unless he or she has filed an objection to the decision. If the responsible rapporteur in preparing a presentation agenda delegates the preparation of the technical application of the Government's decision-making system to somebody else, the rapporteur must, nevertheless, always check the content of the agenda prior to its distribution (OKV/10/50/2010).

Complaints regarding the supervision of Government

Share acquisitions by a Minister's spouse

Summary of the Chancellor of Justice Jaakko Jonkka's responses on 19 November 2010, DNRs OKV/1262/1/2010, OKV/1266/1/2010, OKV/1314/1/2010 and OKV/1316/1/2010

Complaints received by the Office of the Chancellor of Justice requested an investigation into whether the Minister for the Environment, Ms Paula Lehtomäki, had acted unlawfully in "the consideration of matters relating to the Talvivaara mine, government guidance on matters relating to the mine, or decision-making relating to the mine" and in her role as the Minister of the Environment after her husband had acquired shares of the Talvivaara Mining Company Plc.

The complaints referred to certain newspaper articles on the topic. Ms Lehtomäki's husband had first bought shares on 15 January 2010, and the rest of them shortly after that date. The complaints claimed that share ownership in Ms Lehtomäki's immediate family should disqualify her. If indeed she had been disqualified while overseeing any consideration of matters, government guidance or decision-making relating to the mine, the complaints demanded that necessary steps be taken to take sanction against Ms Lehtomäki. In addition, the complainants considered it inappropriate that a Minister preparing new mining legislation should be linked to the mining industry.

In his response to the complaints, the Chancellor of Justice stated the following:

Minister's declaration of interests

Under section 63(2) of the Constitution, a Minister shall, without delay after being appointed, present to the Parliament an account of his or her commercial activities, shareholdings and other significant assets, as well as any duties outside the official duties of a Minister and of other interests which may be of relevance when his or her performance as a member of the Government is being evaluated. The complaints received did not question the minister's own shareholdings, but those of the members of her family. Thus, when considering any additions to the minister's declaration of interest, we needed to apply and interpret the concept of "other interests" in the Constitution.

In its plenary session of 16 September 2010, the Government had decided to submit a statement to Parliament and attached to it Minister of the Environment Paula Lehtomäki's declaration of changes to her interests, which was dated 7 September 2010.

The Ministerial interests mentioned in section 63 of the Constitution were originally included in section 36c of the (former) Constitution. The preamble to the Government Bill (HE 284/1994 vp) on amendment to the Constitution said that the declaration of interests should in principle apply to a minister's own interests. In some cases, for example, holdings by minister's family members may, however, cause the minister him or herself to have interests analogous to those described in the law, in which case they may also be subject to disclosure. In this respect, the scope of the obligation to disclose should be settled on a case by case basis. According to the Government's preamble on defining the scope of the obligation to disclose, it is essential that the interests covered may be seen as objectively relevant when assessing the activities of the minister from an external perspective.

Section 36c of the former Constitution and section 63(2) of the current Constitution on Ministers' declaration of interests prescribe that a Minister shall declare all their assets and interests referred to in the law when they are appointed to their position and shall include "whatever should be considered sufficient for the purpose of the obligation to disclose under normal circumstances". Drawing up the Government Bill it was assumed, however, that if during a minister's term of office there were any significant changes to the information covered by the obligation to disclose, the minister should also inform Parliament of the relevant changes in an appropriate manner.

Case evaluation

When we started investigations into the complaints received by the Chancellor of Justice, it was first necessary to point out that the stock market legislation, applicable to members of the Government and their families, includes clearly defined rules of procedure backed by criminal sanctions for persons and situations in which the person in question may be in possession of insider information. In this respect, the acquisitions of shares in Talvivaara Mining Company Plc in early 2010 were being investigated by the special authority, the Financial Supervisory Authority (Fin. Finanssivalvonta). The Financial Supervisory Authority informed us on 19 November 2010 that their investigations did not reveal anything to suggest that the Minister for the Environment, Paula Lehtomäki or her husband would have had any insider information about the Talvivaara project, announced on 9 February 2010, which concerns the extraction of uranium.

In order to deal with these complaints (excluding those concerning the uranium extraction project), a review was undertaken of all decisions taken by Government in 2010 and the latter part of 2009. Reading through the decisions did not reveal any cases in which the Government plenary session or the Cabinet Finance Committee had dealt with any Talvivaara funding or investment support matter or indeed any other matter concerning the mine. Government documents do reveal that in the spring of 2007 (2 March 2007), the Cabinet Committee on Economic Policy considered Talvivaara Mining Company's application for the funding of some infrastructure investments outside the mining area. The matter fell within the remit of the then Ministry of Trade and Industry (now the Ministry of Employment and the Economy) where these types of matters would be handled.

The Committee discussion took place during Prime Minister Matti Vanhanen's first government, in which Ms Lehtomäki held the post of Minister for Foreign Trade and Development, and she was not a member of the Cabinet Committee on Economic Policy.

Registry data from the Ministry of the Environment indicate that there were no pending matters relating to Talvivaara Mining Company Plc at the Ministry during the time period mentioned in the complaints. In addition, the mining sector is regulated by the relevant provisions of the Mining Act and it falls within the remit and responsibilities of the Ministry of Employment and Economy as described in Section 1(30) of the statute on the Ministry of Employment and the Economy. Therefore, 'consideration' of the mining sector legislation does not come within the remit of the Minister of the Environment. Should any proposals be made in future to amend the mining legislation, the Minister should consider the possibility of his or her disqualification in line with established practice.

Section 63 of the Constitution contains provisions on ministers' obligation to disclose their interests, including their and their immediate families' shareholdings, and requires disclosure of that information before Parliament. Legislation concerning ministers' interests reserves a central role for Parliament. The procedure complements the Parliament's available methods of oversight, and at the same time it increases public confidence in the objectivity of Ministers' official acts. Given the fundamental purpose of the rules for ministers' disclosure of interests, disclosure to Parliament may be relevant when Parliament assesses whether the Government or its individual members have its confidence. The Minister for the Environment, Paula Lehtomäki, had informed the Cabinet of the above-mentioned change in her immediate family's shareholdings, and in turn the Cabinet had submitted a notice to Parliament as required by the Constitution. Consideration of the complaints did not reveal anything to warrant measures by the Chancellor of Justice as the supervisor of the legality of ministers' official acts.

4

SUPERVISION OF FUNDAMENTAL AND HUMAN RIGHTS

Basic and human rights and the Chancellor of Justice

In Finland, several agencies monitor the implementation of basic and human rights. These include domestic law enforcement agencies as well as appeal and enforcement bodies. Appeal and enforcement bodies include domestic courts, as well as international courts and human rights committees. The soon-to-be-established Human Rights Centre will promote such basic and human rights issues, which are currently not sufficiently dealt with or in a sufficiently coordinated manner (HE 205/2010 vp). In addition, the supreme guardians of the law monitor the implementation of basic and human rights while ensuring that public authorities and officials obey the law and fulfil their obligations.

A basic and human rights perspective is actively present in the work carried out by the Chancellor of Justice when he is investigating complaints, launching his own initiatives, carrying out audits, issuing statements of opinion to government departments and other bodies, and in his international cooperation. Complainants also refer to basic and human rights more and more often.

A basic and human rights perspective is also included in investigations into complaints, regardless of whether the complainant has cited it or not. In other words, complainants do not necessarily mention a basic and human rights perspective, and this is not expected from them. The content of the complaint is sufficient when the complainant has expressed the kind of erroneous action they feel they have received from the authorities. On the other hand, the complainant may feel that their basic and human rights have been infringed by an action, which actually constitutes a normal and lawful activity of the authorities. Complaints are always considered by reference to basic and human rights, regardless how the complainant expresses their view on the issue. This aspect was underlined by the Constitutional Law Committee which noted, in its report on the Government Bill on amending the constitutional provisions on basic rights, that basic rights provisions are part of the legal order to be applied in courts and by other authorities. Furthermore, if more than one interpretation of the law is justifiable, the one that best promotes fundamental rights should always be selected (PeVM 25/1994 vp).

It is also clear that not all shortcomings in the application of basic and human rights are adequately highlighted through the complaints procedure. Due to the nature of basic and human rights, shortcomings are often manifested in relation to groups of people who may find it difficult to make complaints, due to language difficulties or other reasons. For this reason, monitoring of basic and human rights requires sufficient opportunities to intervene in the activities of the authorities and public bodies, mainly through our own initiatives and active audits. Therefore, the selection of audit targets is influenced by the basic and human rights perspective.

This section of the report aims to provide an overview of how basic and human rights monitoring was carried out in practice by the Chancellor of Justice during the year under review. In preparing this section, we have reviewed all of our rulings issued in 2010 as well as other decisions where

the perspective of basic and human rights was relevant. The aim is to highlight cases in which the fundamental and human rights perspective had a significant role in the evaluation of supervision of legality.

Rulings

Due process and good governance

Under section 21 of the Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent body for the administration of justice. Provisions concerning the timeliness of proceedings, publicity, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as all the other guarantees of a fair trial and good governance, are laid down by statute.

Based on the complaints received, this year as in previous years, most considerations regarding basic and human rights focused on the issue of good governance as a guaranteed constitutional basic right. The general requirement of the Constitution is complemented by provisions in the Administrative Procedure Act guaranteeing good governance. From this perspective, we may need to evaluate, for example, inappropriate behaviour by a civil servant. Processes pursuant to the supervision of legality may often be the only way to intervene in such behaviour, because the behaviour in itself would not fulfil the requirements for an offence in office.

From the complaints received we can draw the conclusion, however, that civil servants' behaviour and their general attitude towards their customers is a very important factor in how fair and trustworthy citizens consider their actions to be. Similarly, several complaints have led to rulings in which we have had to highlight the requirement on the authorities to respond to citizens' reasonable contacts and enquiries. In evaluating this particular topic, we should remember that the ability to contact the authorities by email has significantly increased their contact with citizens, and thus the workload of the authorities has also increased. Failure to reply to emails or to ensure electronic acknowledgements of receipt still seems to be a problem, which is an indication of insufficient resources and guidance as well as the lack of commonly agreed best practices. The biggest problem in terms of good governance during the year under review have, however, been the long processing times by various public bodies.

Processing times

From a basic rights perspective, citizens always have the right to have their case processed within a reasonable time. It could reasonably be argued, however, that long processing times are particularly problematic when they jeopardise the guaranteed basic right to basic social security.

It is clear that the authorities' lack of resources and organisations' structural problems contribute to long processing times. It is rarely a question of lack of supervision or poor standards. The problem also does not, in most cases, involve a single official or authority.

The situation at the Social Security Appeal Board is an example of structural problems contributing to lengthy processing times and their tendency to jeopardise basic social security. The Deputy Chancellor of Justice started special monitoring of the Board's activities in 2008, and has also actively intervened during the year under review. In 2010, the Deputy Chancellor of Justice issued 22 rulings on complaints regarding the Social Security Appeal Board, and in the majority of them (18 rulings), he highlighted the Board's unreasonably long processing times. The Deputy Chancellor of Justice was still concerned by the Board's performance, given in particular that the Board usually deals with cases as the last instance for somebody trying to secure social security.

Long processing times are problematic for good governance as well as for the constitutional right to basic social security for everyone. The Deputy Chancellor of Justice has stressed that constitutional rights cannot be derogated from because sufficient funds have not been set aside for the purpose. Therefore, the Deputy Chancellor of Justice stated in his ruling of 20 April 2010 that the Ministry of Social Affairs and Health had not taken adequate steps to ensure the implementation of due process and basic rights provisions in the actions of the Board (OKV/14/50/2009). He emphasised that section 22 of the Constitution prescribes that the public authorities shall guarantee the observance of basic rights and liberties and human rights, and to this end use active measures, such as legislation and the allocation of financial resources.

The Deputy Chancellor of Justice asked the Ministry of Social Affairs and Health to submit a plan by 31 May 2010 to reduce the backlog, and to restore the situation to the level indicated in sections 21 and 22 of the Constitution. Following submission of the plan, the Deputy Chancellor of Justice asked for further clarification by 16 August 2010. The Deputy Chancellor of Justice ordered the Ministry of Social Affairs and Health to inform him about their plans and actions to reduce processing times at the Board. During the year under review it has been revealed that the Board's funding and staff levels have been increased and some of the backlog has been cleared. Processing times, however, have not been significantly shortened, because there is a significant number of existing complaints pending.

The length of processing times and its impact on good governance and basic social security was also considered in rulings OKV/150/1/2009 and OKV/95/1/2009 on income support applications. In the latter ruling, the Deputy Chancellor of Justice considered processing times for income support applications from the complainant's perspective, but also at a more general level. The Deputy Chancellor of Justice noted in his ruling that according to a report he had received, in this individual case as well as in several other ongoing complaints, processing times varied significantly between different municipalities. According to other reports, the thresholds for, and means of, intervention by Regional State Administrative Agencies vary significantly. Valvira (National Supervisory Authority for Welfare and Health) and the Regional State Administrative Agencies had been jointly preparing a monitoring plan for all regional administrative agencies to ensure a uniform threshold for intervention and action regarding income support application time limits. The Deputy Chancellor of Justice asked Valvira to report back by a specified date on what action it had taken to harmonise processing times at national level and to evaluate the outcome of these actions.

In ruling OKV/1581/12009, the substitute for the Deputy Chancellor of Justice stressed that the initiation and prompt delivery of a pretrial investigation are in the best interests of due process for all parties involved in a crime. The police had delayed its pretrial investigation of a minor assault so much so that the right to press criminal charges had expired. The crime inspector who was leading the case investigation had made a decision during the pretrial investigation, concluding that the time limit for prosecution had expired because it had been difficult to contact the various parties involved. At the time of reporting the crime, however, about a year of the investigation period remained. The substitute for the Deputy Chancellor of Justice considered that this time should have been enough to complete the investigation in good time before the prosecution lapsed. The substitute also drew the crime inspector's attention to the importance of timely completion of pretrial investigation, and in particular, for guaranteeing due process for all parties involved. Delays in pretrial investigations were also considered in rulings OKV/1730/1/2008 and OKV/64/1/2008 by the Deputy Chancellor of Justice.

Long processing times were also considered from a constitutional perspective in the ruling on the processing time of a permit application at the Ministry of the Environment, made by the Chancellor of Justice (OKV/481/1/2009); the ruling on the processing time for a data correction request at the Office of the Data Protection Ombudsman, made by the substitute for the Deputy Chancellor of Justice (OKV/327/1/2009); and the ruling on the processing time for the Finnish Competition Authority's decision on a request for action, made by the substitute for the Deputy Chancellor of Justice (OKV/871/1/2008). However, these rulings dealt with individual cases that were brought to the attention of the Office of the Chancellor of Justice.

The Finnish Bar Association's procedures for reviewing a case were considered in ruling OKV/991/1/2008. A complaint revealed that the Finnish Bar Association had taken nine years to review the activities of a lawyer between 2001-2010. The reason for this, according to the Association, was that several criminal and civil cases linked to the review had been pending. The Chancellor of Justice did not consider the Association's procedure explicitly unlawful, but noted that it would have been legally more appropriate to have sought to resolve the matter at the Bar Association immediately after the active investigation had been completed in March 2009. This view was supported, for example, by the general principle and basic right to have one's case dealt with without undue delay by an appropriate authority. The Chancellor of Justice informed the Bar Association of his opinion on the handling of the review proceedings.

The right to have one's case heard, and the right to effective legal remedy

Under section 21 of the Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent body for the administration of justice. Often, the implementation of other basic rights is subject to the implementation of this right - it is therefore a significant basic right. The right to receive advice on administrative matters and the right to have one's case heard can be interlinked. Judging from complaints received, problems mostly arise concerning the right to receive a reasoned decision, including any guidance on appeals.

In ruling OKV/72/1/2009, the substitute for the Deputy Chancellor of Justice found that the recording, and processing of an administrative matter, and advice given to a citizen, had been inadequate. The complainants had been in telephone contact with a municipal civil servant on several occasions and tried to negotiate a municipally-owned property by way of compensation for waste water damage they had suffered. They had been informed by telephone that a municipal civil servant was competent to decide the issue. However, the proceedings were never initiated. The substitute for the Deputy Chancellor of Justice noted that the requests the complainants had presented to the civil servant had not been written down, processed or resolved, and the complainants had not been advised or asked to submit the matter in writing. Therefore the procedure had failed to comply with good governance, guaranteed by the provisions of the Administrative Procedure Act on, the correct service procedure, the duty of civil servants to advise, and the initiation of the matter.

Ruling OKV/533/1/2008 emphasised the requirement of section 2(3) of the Constitution that the exercise of public power must always be based on law. The complaint dealt with the Finnish Immigration Service's paperless decision-making practice, according to which residence permits issued abroad did not give rise to a written decision, but only a sticky label indicating that the residence permit was issued for a travel document (passport). The sticky label did not contain any guidance for appeal or any information on whether it was possible to obtain a written decision. The Deputy Chancellor of Justice stated that the Administrative Procedure Act set out certain requirements for the form, content and reasoning of an administrative decision. In addition, section 47 of the Administrative Procedure Act required that also affirmative administrative decisions include an address for appeals. The provisions are designed to guarantee the principles of due process and good governance, as prescribed in section 21 of the Constitution.

In ruling OKV/1386/1/2008, the complainant had applied for permission from city authorities to moor a restaurant ship in municipal waters. The complainant had received a reply letter, which did not include a decision on the request. The substitute for the Deputy Chancellor of Justice stated that the complainant had the constitutional right to receive the decision of a municipal authority on their case, as well as the right to bring a municipal authority's decision to take action, or a failure to take action in a civil matter before an Administrative Court as a municipal appeal. The substitute for the Deputy Chancellor of Justice stated that it was for a competent and independent administrative court to decide whether it would examine a complaint.

During the year under review, police activities in this category included questions on recording investigation notifications and the evaluation of conditions required for pretrial investigations. For example, ruling OKV/507/1/2008 dealt with a case in which the complainant had submitted a written notice of investigation to the police, but the notice had not been recorded on the police information system. According to the police statement, the notice of investigation was related to a case pending before an administrative court. No written pretrial investigation decision had been given on the matter either. In addition, too much time had been spent on assessing conditions for the pretrial investigation. Based on section 21(2) of the Constitution and the provisions of the Criminal Investigations Act, the Deputy Chancellor of Justice found that a pending administrative court case is not a legally acceptable reason to not record a notification. The right to receive a reasoned decision on a matter is based on section 21(2) of the Constitution and its guarantee of a fair trial and good governance. An oral explanation of the matter to the party making the notification does not therefore replace a justified, written decision.

Implementation of good governance in other areas

Several complaints resolved during the year under review related to complainants considering that they had not received an appropriate service in their dealings with the authorities. Often such complaints about administrative failures related to an individual official failing to comply with the law, for example, the Act on the Openness of Government Activities or Act on Electronic Services and Communication in the Public Sector, or some other regulations. Such cases were usually the result of an official lacking the necessary information, training or resources, or human error rather than wilful misconduct. The Chancellor of Justice has therefore directed his ruling to management of the relevant agency, emphasising the importance of guidance, as well as induction and further training.

An example is the Deputy Chancellor of Justice's ruling OKV/1341/1/2008. The complainant had sent three email enquiries to the Ministry of Social Affairs and Health, two of which had been acknowledged by an automated receipt message. The complainant did not receive any other reply to their emails. The Deputy Chancellor of Justice informed the Ministry of Social Affairs and Health of his opinion that the Ministry should draw up guidance for staff on how to reply to enquiries from citizens, so that all those dealing with the Ministry were guaranteed fair and equal treatment. Similar considerations applied in the Deputy Chancellor of Justice's ruling on responding to a request to receive documents.

An official's duty to provide advice was also considered in the Deputy Chancellor of Justice's ruling OKV/211/1/2009, in which he stated that when planning permissions are being given, the issuing authority must at the same time highlight any requirements concerning air traffic noise. Here, a proposed building was going to be built in a designated area of air traffic noise. The municipal building inspection authorities had requested an assessment of soundproofing requirements only in a meeting after granting a planning permission.

Ruling OKV/979/1/2008 considered officials' objectivity as part of good governance. The leader of a city council had signed a request for clarification, which included questions about the city council

leader him/herself, and was addressed to a complainant in reply to the complainant's claims for rectification, which had originally been addressed to the executive board of the municipality. The substitute for the Deputy Chancellor of Justice considered that an official's impartiality is closely related to the principles of good governance, and in this regard, the procedure had been contrary to the requirements of good governance.

Ruling OKV/101/1/2010 was given in a case in which an official of a municipal culture and education board, responsible for organising municipal education services, had decided not to approve an application for school transportation by the parents of a student. The decision included (an erroneous) address for appeal, and the parents ended up appealing against the decision to the culture and education board. The board rejected the claim for rectification on the grounds that the parents had not presented any specific reasons that would justify the taxi transportation they had applied for. After the board had rejected the claim for rectification, the parents submitted a new school transport application, including a psychologist's opinion, to the same official. The official did not make a new decision, but advised the parents to appeal against the board's earlier decision before an administrative court.

The substitute for the Deputy Chancellor of Justice stated that negative administrative decisions are not legally final. A new decision may be made during an appeal period. The principles of good governance, as prescribed in the Administrative Procedures Act, safeguard the constitutional right to receive appropriate treatment and a reasoned decision. The service principle, described in section 7 of the Administrative Procedures Act, expects public authorities to follow a customer-oriented and service-oriented approach. This principle entails that the customer must be given an opportunity to receive a revised decision to their application without the need to resort to appeal. For the above-mentioned reasons, the official should have reconsidered the application on the new grounds and not have advised the applicants to appeal against the earlier decision.

Grounds for good governance from the perspective of section 21 of the Constitution were also considered in the following rulings on replying to document requests (OKV/1108/1/2007, OKV/1729/1/2008 and OKV/1030/1/2009); on the authorities' obligation to use clear and understandable language (OKV/577/1/2009, OKV/958/1/2009); on the authorities' obligation to respond to a request letter (OKV/159/1/2008, OKV/219/1/2008, OKV/221/1/2008, OKV/1490/1/2008 and OKV/1648/1/2008,) on procedures for cautioning an official (OKV/385/1/2008); and on the duty of care in public duties (OKV/737/1/2009).

The right to a fair trial

Section 21 of the Constitution guarantees due process in both civil and criminal trials as well as in the application of administrative law. The European Court of Human Rights has highlighted some questions regarding Finnish court practice. The main problem from a fundamental and human rights perspective has been the length of trials, which is considered to be in breach of the right to a fair trial under Article 6 of the European Convention on Human Rights. The Article requires that a fair trial should be conducted within a reasonable time.

Ruling OKV/1/31/2009 considered the length of a trial, but in exceptional circumstances which caused the delay. The Chancellor of Justice concluded that a District Judge's conduct had not fulfilled the duty to take care as expected of their role, when in a debt restructuring case they had failed to send a notification to a debtor's address for service. Due to the erroneous procedure, the debtor had lost their right to be heard in the case, and their constitutional right under section 21 to have their case dealt with appropriately had been compromised. The procedure was against the fundamental and human right to have a case dealt with within a reasonable time and without undue delay. After considering the charges in the case, the Chancellor of Justice ruled that there were no probable cause to support prosecution, but he considered the procedure had been reprehensible and informed the District Judge of his opinion.

Ruling OKV/5/31/2009 is an example of the fact that delays in proceedings may, exceptionally, be caused by something other than a backlog or similar issues. The Chancellor of Justice asked the Prosecutor General to bring charges against a district court office secretary and a senior judge for negligent breach of duty. It was believed that several criminal cases pending before the district court had been delayed because, due to the negligence of the office secretary, the cases had not been appointed case-handlers. The procedure was also contrary to the requirement of fundamental and human rights to have cases dealt with within a reasonable time and without undue delay.

During the year under review, in addition to trial lengths, the Office of the Chancellor of Justice has focused on other issues concerning the right to a fair trial such as the right to defend oneself in person or through the lawyer of one's choice; the right to be presumed innocent until legally proven guilty; and the right to answer to the other party's demands, in accordance with the principle of contradiction.

An error of procedure was considered in ruling OKV/335/1/2010. The Supreme Court had sentenced the complainant for bribery without holding a hearing, even though the Court of Appeal, which had dealt with the case in the first instance, had dismissed the charges against the defendant. The European Court of Human Rights had ruled that the Supreme Court proceedings in this case had breached the European Convention on Human Rights Article 6, Paragraph 1. According to the European Court of Human Rights, the Supreme Court had not been able to resolve the matter appropriately without holding a hearing to assess the defendant's report, when it was judging, amongst other things, the defendant's intent, which is something that was not included in the original decision by the Court of Appeal, who had heard the defendant in person. The complainant asked the Chancellor of Justice to investigate whether the proceedings in the Supreme Court had included a processing error such that the Chancellor of Justice would be justified in taking steps to nullify a legally final judgement on the grounds of grave procedural error. The Chancellor of Justice considered that, he had no competence to assess the Supreme Court's procedure differently than the European Court of Human Rights. An error of procedure had occurred in the case. The nature of the error was such that it was reasonable to assume that it had affected the outcome of the case. The Chancellor of Justice asked the Supreme Court to nullify the judgement in the case, because the European Court of Human Rights had ruled it had breached the European Convention on Human Rights Article 6, paragraph 1, and it was reasonable to assume that the procedural error had had a substantial effect the outcome of the case. Please see the ruling in more detail on page 84.

Ruling OKV/1451/1/2008 concerned the conduct of a district judge, which was considered to have been contrary to the presumption of innocence. The district court had convicted the complainant of counterfeiting. The judge's reasoning included, under the heading "Imposition of a penalty", that "this is in spite of the fact that for whatever reason, no conviction has been demanded for A (the accused) for attempted fraud in addition to counterfeiting". The description of the criminal act charged did not include the elements of fraud, and it did not appear from the judgement that the prosecutor would have presented an alternative charge; or that the possibility of having committed or attempted to commit fraud would have been considered at the trial; let alone that the complainant would have had the opportunity to address such criminal allegations or present any evidence to the contrary. The Deputy Chancellor of Justice stated that the importance of the presumption of innocence is realised in the written reasoning of the court. Rejection of the presumption of innocence is an either–or type of solution. If the presumption of innocence has not been repealed, the suspect must be presumed innocent. The reasoning of the court must be worded in such a way that no doubt can remain of the accused having committed a more extensive crime than the one the prosecutor had demanded a punishment for, and they had been convicted of. The sentence highlighted in the complaint contained an allegation that the accused had committed another crime in addition to the one they were actually accused of. In particular, the words "for whatever reason" were ambiguous and provoked further questions. It was also key that the decision did not attempt to obtain further clarification. The European Court of Human Rights has held that court reasoning may indicate that a court considers a defendant guilty, even if the offence has not formally been included in the sentence. The European Court of Human Rights holds that where a court reasoning for a decision indicates that the accused has committed an offence, and the accused had not been afforded the opportunity to exercise his rights, the presumption of innocence has been breached.

Ruling OKV/312/1/2008 considered the principle of contradiction. The complainant had brought a suit against an insurance company. The district court had dismissed the suit. The Court of Appeal did not overturn the final ruling, but ruled that the insurance company was not entitled to claim reimbursement for the amount of VAT on its legal expenses before the Court of Appeal, as it had not shown that it was not able to deduct these in its own tax return. The Supreme Court overturned the Court of Appeal ruling in this respect. The Supreme Court ruled that there was no justification to reject the insurance company's legal expense claim for the amount of VAT for the reason given. The Supreme Court stated that the complainant had not challenged the insurance company's compensation claim in respect of VAT. The Court of Appeal had also not considered relevant details in considering the complainant's obligation to pay the insurance company's legal expenses including VAT. In their assessment, the substitute for the Deputy Chancellor of Justice stressed the principle of contradiction. Had the Court of Appeal informed the parties of the issue concerning VAT on legal expenses, the principle of contradiction would have been assured, and the case would have not come as a surprise to the parties. The Court of Appeal therefore erred when it resolved the issue without the parties' having been given the opportunity to be heard. The procedure did not meet the procedural requirements of the principle of fair trial. The substitute for the Deputy Chancellor of Justice informed the team responsible at the Court of Appeal of their opinion on the Court's error.

Ruling OKV/1531/1/2008 concerned public information about a trial and its relationship to the presumption of innocence. A district court had published an advance public release about a trial. The release included the nature and details of the matter (title of offence) and the processing schedule. The nature of the matter included the following: "A father has been charged with repeatedly abusing his children, who are minors, and with once abusing his wife. The father is alleged to have committed aggravated sexual abuse against his children, partly on his own and partly with his wife, over several years. The father is also accused of having sexual relations with a close relative and raping his own child." The Deputy Chancellor of Justice stated that the publication of the release regarding the forthcoming trial contributed to the court's transparency. This type of release should, however, remain strictly neutral in tone. The provisions of Article 6 of the European Convention on Human Rights on a fair trial, and in particular, on the requirement of presumption of a defendant's innocence, as well as the parties' impartial treatment must be followed. In simply detailing the charges, the press release only showed the prosecutor's side of the matter. In view of the requirement for impartiality and the presumption of the defendant's innocence, the release should have also included the defendant's viewpoint, namely their possible denial of the accusation and its grounds. Thus, the press release was insufficient and partial, to the detriment of the defendant. The Deputy Chancellor of Justice informed the district judge who had drafted the press release of his opinion regarding an advance public release about the trial.

The Chancellor of Justice issued a ruling on the so-called 'drug police' case, regarding the procedures of the police and prosecuting authorities. Based on nine complaints, the Chancellor of Justice investigated the pretrial procedures of the police and prosecuting authorities, and police procedures prior to initiating pretrial investigations. The Chancellor of Justice also included a basic and human rights perspective in his assessment of the above procedures. For example, the assessment of police procedure highlighted a blurring of authority between the investigation conducted by the Police Department of the Ministry of the Interior and the initiation of a pretrial investigation on a police officer's suspected criminal offence. As a related issue, amongst other things, the right to remain silent as part of a fair trial was also considered. According to the Chancellor of Justice there was no proof of misconduct by the police department. The Chancellor, however, noted that the complainants' criticism of the police department's procedures had largely focused on the structure of its operations, and the criticism was not completely unfounded. In his ruling the Chancellor of Justice concluded that the situation was not satisfactory either for supervisors of legality or for the legal protection of the subject of the legal supervision (OKV/186/1/2008).

Equality

Section 6 of the Constitution prescribes that everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, belief, opinion, health, disability or other reason that concerns him or her personally. Equality is the starting point for all basic rights. It is invoked in complaints relatively frequently, but on the other hand, equality is perhaps not given sufficient weight in those complaints.

It is likely that not all those who have had their right to equal treatment breached – such as immigrants, due to language difficulties or lack of information – make a complaint to the Chancellor of Justice or another supervisory body.

In 2009, the Chancellor of Justice took the initiative to investigate problems related to the poor implementation of primary and secondary school student welfare services (OKV/1/50/2009). Reports on the security and working environment in schools revealed a number of problems in primary and secondary schools, from student welfare staff levels being below national recommendations to physical shortcomings in the school environment. There are great differences between different municipalities and schools, which the Chancellor considers to be a problem in terms of equality. The Chancellor of Justice asked the Ministry of Education to carry out a nationwide study of the issue. Based on the study, the Chancellor of Justice asked the Ministry of Education to submit its views by the end of 2010 on the level of development and harmonisation of student welfare services during the year, and whether there were still some gaps in the uniform implementation of student welfare as mentioned in the Ministry of Education and the Board of Education reports. At the same time, the Chancellor of Justice asked the Ministry of Education to list what concrete measures it had considered appropriate to take based on its study. Due to the findings in the Ministry of Education and Culture report of 15 December 2010, the Chancellor of Justice asked the Ministry for a reasoned and concrete assessment by the beginning of August 2011 on whether the resources and quality guidance based on recommendations that municipalities had directed at student welfare services were enough to achieve an adequate and nationally uniform level of student welfare, as prescribed by the Basic Education Act.

Please see also the Chancellor of Justice's statement on page 9.

In his rulings on two complaints (OKV/1333/1/2007 and OKV/181/1/2008), the Deputy Chancellor of Justice considered equality regarding municipal civil servants' and general employment collective bargaining agreements. Tehy (the Union of Health and Social Care Professionals) and the Commission for Local Authority Employers accepted the proposal made by the Ministry of Labour appointed conciliation board concerning the employment conditions of Tehy members and the legal position of Tehy. The Deputy Chancellor of Justice assessed the agreement insofar as it provides that it applies only to members of Tehy.

The Deputy Chancellor stated that at the time of drawing up the Tehy agreement, the Commission for Local Authority Employers was bound by prohibition of discrimination as prescribed by the Constitution and the Non-discrimination Act. As the agreement was concluded, its binding nature was limited to the members of Tehy. Such a limitation does not always necessarily violate the prohibition on discrimination. Limiting the binding nature of the agreement in this way meant, however, that it was possible for an employer to agree on different terms of service/employment with employees doing the same job depending on whether the person doing the job was a Tehy member or not.

The Commission for Local Authority Employers had in its report explained how pay differences for the same jobs had come about. The Deputy Chancellor stated that the report was enough to raise a presumption of discrimination, as described in section 17 of the Non-discrimination Act. The Deputy Chancellor considered the agreement to be in breach of the Non-discrimination Act, despite the fact that it had been possible to limit the applicability of the agreement. He also thought that even if employees had the opportunity to enforce their rights in court, it did not relieve the Commission of its obligation

to comply with prohibition of discrimination under the Constitution and the Non-discrimination Act. The Deputy Chancellor of Justice informed the Commission for Local Authority Employers of his views, and asked the Ministry of Finance and the Ministry of Employment and the Economy to consider whether the basic and human rights of those civil servants and employees who were not covered by the civil servants' and collective bargaining agreements had been adequately protected.

Ruling OKV/424/1/2008 also assessed the municipal civil servant and general employment collective bargaining agreements in relation to equality. It appeared that a farm relief worker who was a close relative of a farming family had an agreement which stipulated lower pay than that received by a person who was not related to the family but doing the same job. Evidence in the case raised a presumption of discrimination as described in section 17 of the Non-discrimination Act, and there was no evidence to justify unfavourable treatment as described in section 7 of the Non-discrimination Act. The municipality had been obliged to comply with the municipal civil servant and general employment collective bargaining agreement in force. In not so doing, however, the municipality had acted not only against the Employment Contracts Act, but also against the Constitution and the Non-discrimination Act. The Deputy Chancellor of Justice informed the municipality of his opinion that the municipality had acted against the Constitution, the Non-discrimination Act and the Employment Contracts Act, and sent the ruling to the Commission for Local Authority Employers for information. In addition, the Deputy Chancellor of Justice asked the Commission for Local Authority Employers to inform him of any action potentially required as a result of the ruling.

In ruling OKV/1027/1/2008, the substitute for the Deputy Chancellor of Justice assessed the appropriateness of the official appointment procedure at Veronkantokeskus (tax collection centre) from the perspective of equality. The substitute considered the appointment memorandum inadequate. For this reason, the appointment procedure did not meet the constitutional requirements of good governance as the parties involved were unable to ascertain with confidence that the discretion in the making of appointments had been appropriate. Section 125(2) of the Constitution and the Non-discrimination Act require that applicants' qualifications must be mutually comparable in such a way that the grounds for appointment may be used as a basis for comparison. Similarly, the Chancellor of Justice's legal supervision of the authorities, as prescribed in section 108 of the Constitution, assumes that it must be possible retrospectively to assess the discretion used in the making of appointments from the perspective of equality. The substitute for the Deputy Chancellor of Justice informed Veronkantokeskus of the inadequacies in its appointment memorandum for future reference.

Ruling OKV/1211/1/2008 concerned the fact that the implementation of equality may also require sufficiently reliable statistical information. A case revealed that staffing levels in municipal welfare services for substance abusers were less than half those in the national quality recommendation. It was also revealed that the local monitoring system could only track average waiting times for treatment, but no actual or other waiting times. The Deputy Chancellor of Justice said that to fulfil the legal care guarantee, each person in need of substance abuse services had to be able to receive them within the legally prescribed period. Implementation of the care guarantee could not be reliably monitored without a sufficiently detailed monitoring system. The Deputy Chancellor of Justice also stated that the inadequate monitoring of waiting times and the potentially insufficient resourcing might endanger the citizens' right to receive equal treatment in substance abuse services.

In his ruling OKV/684/1/2008, the Deputy Chancellor of Justice assessed for non-discrimination a situation in which a municipality collected a double mooring fee from non-residents as compared to residents of the municipality. The ruling considered non-discrimination in the context of municipal self-government. The Deputy Chancellor of Justice stated that municipal authorities must comply with the parameters set for municipal decision-making. These are obligations set specifically for public authorities in the Constitution, as well as the requirement of good governance expected for official activities. Public authorities must guarantee basic and human rights. The Deputy Chancellor found that the variance in mooring fees had an acceptable reason based on section 6(2) of the Constitution and, ultimately, section 121 on the self-governance of residents. However, he pointed out that the fees should be reasonable and that the differences between fees should not be unreasonably high. For this reason, the municipality's decision on the tariff should in future include an explanation as to why the members of the municipality are treated differently regarding the mooring fees, and what the difference is based on.

The right to one's language and culture

Section 17 of the Finnish Constitution prescribes that the national languages of Finland are Finnish and Swedish. According to the above section, the right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

Based on the complaints received we can conclude that there are no major problems related to linguistic rights. In his ruling OKV/940/1/2008, which was based on a complaint, the Deputy Chancellor of Justice expressed his opinion on linguistic rights. Two police officers had stopped the complainant in connection with traffic control. The police officers' police department was situated in a fully Finnish-speaking territory. The complainant had been questioned in Finnish and the penal notice was issued in the same language. The complainant claimed that as a Swedish-speaker they should have had the right to use Swedish when addressing the police officers. The Finnish Constitution, the Language Act and the Criminal Investigations Act all include provisions on the complainant's linguistic rights. The Language Act, for example, emphasises the authorities' obligation to guarantee the observance of an individual's linguistic rights, without the need for the individual to appeal for them. The suspect should have had the opportunity to choose, without any pressure, their own language, either Swedish or Finnish, to use during the pretrial investigations. It was therefore clear that the complainant had in this case had the right to use their own language (Swedish) during the penal proceedings, if they so wished. The Deputy Chancellor of Justice drew the police officers' attention to the fact that clients have the right under the Constitution, the Language Act and the Criminal Investigations Act to use the Swedish language in their dealings with the police, if they so wish.

Ruling OKV/305/1/2008 considered street signs and other wayfinding signs in a bilingual municipality. The municipality had bilingual street signs and road signs in only some parts of the

municipality. Some public building signs were also monolingual. The Deputy Chancellor of Justice cautioned the municipality for non-compliance with the Language Act. The Deputy also considered contrary to the Language Act a practice in which a public building sign was presented in two languages when services offered in the building were provided bilingually, but only in one language when the services offered in the building were only provided in one language (schools, day care centres). The Deputy Chancellor of Justice ordered the municipality to report back by a specified date and indicate what steps it had taken to rectify the error.

Under section 17 of the Constitution, the Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and persons in need of interpreting or translation assistance owing to a disability shall be guaranteed by an Act. The Office of the Chancellor of Justice did not receive any complaints regarding the rights of these minorities to their own language and culture during the year under review.

The right to life, personal liberty and integrity

Under section 7(1) of the Constitution, everyone has the right to life, personal liberty, integrity and security. Under subsection 3, the personal integrity of the individual shall not be breached, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.

Our rulings regarding the basic right to personal integrity are often related to police procedures. Ruling OKV/1597/1/2008 assessed a case in which the complainant had been stopped by police traffic control for speeding. Prior to that, an apprehension warrant had been issued against the complainant so that a summary penal order could be served on him, and thus the complainant was taken to the police station, where the penal order was served on him. The substitute for the Deputy Chancellor of Justice stated that on issuing apprehension warrants, it must be determined that the requested action would not be in conflict with the principle of proportionality or the least harm principle. In particular, that determination should take into account the fact that an apprehension warrant constitutes, in principle, a breach of personal freedom and integrity. The substitute for the Deputy Chancellor of Justice stated that in view of the basic rights, it would have been more appropriate to try to contact the complainant by other means before issuing the apprehension warrant. The substitute for the Deputy Chancellor of Justice drew a senior constable's attention to the observance of section 6 of the Act on summary penal proceedings, the principle of proportionality and the principle of least harm when serving summary penal orders.

The right to personal integrity was also considered in ruling OKV/1227/1/2009 regarding a child welfare institution. The rules of the child welfare institution stated that if a minor was suspected of smoking, the consequence was that they would only be allowed to attend school and moreover be

temporarily confined to their own room or shared apartment. In the case in question, the child's agreed weekend leave had also been cancelled. A carbon monoxide breathalyser was used in the institution to detect the use of tobacco products. In his ruling, the Deputy Chancellor of Justice emphasised that a child's freedom of movement may only be restricted as prescribed in the Child Welfare Act. In addition, he stressed that a breath sample taken with the carbon monoxide meter was a physical examination. A physical examination represented a breach of personal integrity. Therefore it may only be carried out when the requirements specified in the Child Welfare Act are met. The Deputy Chancellor of Justice ruled that the practice employed at the child welfare institution was against the Child Welfare Act. It did not adequately safeguard the children's right to freedom of movement and personal integrity. The ruling asked the child welfare institution to comply fully with the Child Welfare Act.

Performing a security check on an individual and taking a saliva test were considered in ruling OKV/80/1/2008. A police officer had performed a security check on an individual before taking a saliva test in the police car to detect drugs consumption. Under the Police Act, when apprehending an individual a police officer has the right to check the person and the goods they are carrying. The Deputy Chancellor of Justice noted in his ruling that taking a saliva test restricts the tested person's freedom in a way comparable to apprehension. However, the performance of the security check on an individual breached their basic right to personal integrity. A basic right may not be breached without statutory authority. Provisions limiting basic rights must be interpreted narrowly, and the wording in the Police Act should not have been interpreted in a way that broadened the restriction of a basic right. The Deputy Chancellor of Justice therefore concluded that the security check on the person did not have a statutory basis.

The Chancellor of Justice paid special attention to personal integrity when he issued an opinion on the Ministry of Social Affairs and Health's proposal for a law on biobanking. The purpose of the law was to promote the wider use of human samples in scientific research and more efficient research methods. In addition, the proposal included the establishment of a nationwide biobanking database. The Chancellor of Justice stressed the importance of guaranteeing a sample donor's personal integrity and the protection of private life. Due to such connections to basic rights, the Chancellor of Justice asked the Ministry to consider whether the reasoning for the proposal should include reference to obtaining an opinion from the Constitutional Law Committee (OKV/12/20/2010). Please see also page 100.

Protection of privacy

Under section 10 of the Constitution, everyone's private life, reputation and the sanctity of the home are guaranteed. Under subsection 2, the confidentiality of correspondence, telephony and other confidential communications is inviolable.

Ruling OKV/1729/1/2008 involved a case in which a nurse had without legal justification opened a letter addressed to a care home resident. There was no evidence that the required authorisation would have been obtained from the care home resident themselves or their family. A general trustee

may not validly give consent to open any mail other than that directly involved with their task. Thus, the care home had acted in error. The care home, or the municipality which was responsible for the care home's lawful operation, had not drawn up appropriate guidance for its staff regarding the opening of their customers' post. For this reason, the Deputy Chancellor of Justice asked the municipality to pay attention to the confidentiality of correspondence and its obligation to adequately control the conduct of employees in the social welfare services.

In ruling OKV/120/1/2009, the Deputy Chancellor of Justice found that the basic right to privacy had been breached. A house search had had been carried out at the complainants' property. The owners of the said property had not been given the opportunity to be present at the search, and they had not been informed of the search after it had taken place. The Deputy Chancellor of Justice stated that ultimately the case involved the guaranteed basic right to privacy and domestic peace. For this reason, the right to be present at a house search can only be denied when it would actually delay the performance and/or jeopardise its purpose. In this case, the person who performed the house search had not attempted to contact the property owners. In assessing the culpability of the police procedure, the Deputy Chancellor of Justice, however, took into account the fact that the search had been performed of an unlocked garage at a summer residence. The individual's legal rights had been breached to a lesser extent than, for example, had the search been performed of a private residence.

Freedom of speech and publicity

Under section 12 (1) of the Constitution, everyone has the freedom of speech. Freedom of speech entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of speech are laid down in an Act. Provisions on restrictions relating to programmes that contain images and are necessary for the protection of children may be laid down in an Act.

Under subsection 2 of the law, the right to publicity entails that documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

Ruling OKV/166/1/2008 considered the relationship between freedom of speech and other basic rights. The Deputy Chancellor of Justice informed a municipality for future reference that municipal school rules prohibiting photography, video and sound recording in school premises breached section 12(1) of the Constitution. The prohibition was part of the school rules, which had been issued in accordance with section 29 of the Basic Education Act. The provisions of the above section regarding the purpose and scope of school rules were not, however, precise enough provisions and they did not meet the general requirements for restricting basic rights, which would have allowed the drawing up of rules to limit the freedom of speech. The prohibition did not include an explanation as to what extent it was necessary for the safeguarding of other basic rights, and how it restricted freedom of speech. The protection of other basic rights, such as safeguarding students' cultural rights and their privacy, may be an acceptable reason to limit the freedom of speech. Even then, however, the limitation should be carried out according to the general requirements for restricting basic rights.

In this case, in particular, attention was focused on the strict limits, precise nature and necessity of the prohibitions, their appropriate relationship to the object of legal protection safeguarded by basic rights, and the weight of their underlying social interest.

In ruling OKV/257/1/2009, the Deputy Chancellor of Justice found that the Constitutional basic right to receive information from official documents, as well as the obligation imposed by the Act on the Openness of Government Activities to take into account the right to receive information during a decision-making stage, require that individuals and communities have the opportunity to obtain sufficient information about the performance of public duties and actions of bodies wielding public power. In the case of a joint municipal authority working group which had published minutes of its meeting only after some six months, the Deputy Chancellor of Justice pointed out to the joint authority that the procedure had not adequately fulfilled the obligation under section 17 of the Act on Openness of Government Activities.

In his ruling OKV/603/1/2008, the Deputy Chancellor of Justice considered the right to make video and sound recordings, as a part of freedom of speech. An individual questioned in a pretrial investigation complained that he had been prohibited from video and sound recording the questioning. The Deputy Chancellor of Justice stated that under section 12 of the Constitution and article 10 of the Convention for the Protection of Fundamental Freedoms, the complainant had indeed had the right based on freedom on speech to video and sound record the questioning. This right, which in this case did not fall within the core area of freedom of speech, may, however, be restricted by law when necessary in a democratic society for the reasons of public safety and prevention of crime. Pretrial proceedings, including the questioning of the suspect, are not public events. Likewise, under the Act on the Openness of Government Activities all pretrial material, including any material from questioning, is in principle confidential when a pretrial investigation is ongoing. Under the above-mentioned Act all material may be considered confidential until the investigation is completed, including vis-a-vis the suspect. Thus, the suspect was not entitled to record the questioning without the permission of the examiner.

The right to adequate social and health care services

Section 19 of the Constitution guarantees the right to receive basic subsistence and care to all those who do not have the means necessary for a life of dignity. Under subsection 3, the public authorities shall guarantee adequate social and health care services for everyone and promote the health of the population. Likewise, subsection 4 prescribes that the public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.

The contents of this right fell to be considered when a fire occurred in a municipally-owned detached house in the city of Espoo in March 2008. The fire killed five people. The house was a designated support housing unit for people with substance abuse problems. The Chancellor of Justice took it on his own initiative to investigate the fire safety arrangements in the support home (OKV/8/50/2008). The Chancellor said that although the law did not set explicit quality standards for the standard of housing, in promoting the right to housing, particular attention must be paid to

healthy conditions for housing. As the property owner and support housing provider, the city should have ensured that a rescue plan and safety instructions were prepared. Considering the safety of the residents, it was not appropriate for the city to have passed the responsibility of purchasing and maintaining smoke alarms to the tenants.

The right to a healthy environment

Under section 20(2) of the Constitution, the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and the possibility of influencing decisions that concern their own living environment. In ruling OKV/899/1/2008, the Deputy Chancellor of Justice assessed the right to a healthy environment and the possibility of influencing decisions that concern one's own living environment in a case regarding failures in highway noise control. The Deputy Chancellor of Justice considered that planning obligations under the Land Use and Building Act had not been fulfilled as required by law. Similarly, the standards of good governance had not been achieved. The Deputy Chancellor of Justice stressed that good governance includes the cooperation between authorities to achieve their objectives and obligations, and he informed the municipality and the Road Administration of his views.

5

More extensive statements of opinion in the field of legality supervision

General

This section contains cases that give a more extensive picture of the activities of the Chancellor of Justice. The texts have been selected according to their relevance or topicality.

During 2010, the Chancellor of Justice dealt with various disqualification issues. In April, the Chancellor of Justice prepared a memorandum for the then State Secretary Risto Volanen regarding a Cabinet member's disqualification from the handling of nuclear power plant applications. The memorandum has been included in this report both by virtue of the issue itself but also to show how the Office of the Chancellor of Justice typically responds to requests for opinion on legal issues, as described in section 108(2) of the Constitution.

In September 2010, the Chancellor of Justice served a notification on the Parliamentary Constitutional Law Committee to begin investigations into the official actions of the former Prime Minister, Matti Vanhanen. The Chancellor of Justice found that Matti Vanhanen had been disqualified from participating in those plenary sessions where decisions had been taken on granting RAY (the Finnish Slot Machine Association) funding to the Nuorisosäätiö foundation. The Chancellor of Justice stated that the case also needed to be assessed under criminal law. According to the law, the Chancellor of Justice has no competence to launch a pretrial investigation of the activities of a Cabinet member. The launch of a pretrial investigation can only be carried out at the Constitutional Law Committee's discretion. At its meeting of 12 October 2010, the Constitutional Law Committee asked the Prosecutor General to start pretrial investigations to determine the legality of former Prime Minister Matti Vanhanen's official acts.

The Chancellor of Justice issued a ruling in June 2010, stating that a Head of Department at the Ministry of Employment and the Economy was disqualified from the consideration of a nuclear licensing decision. The Head of Department had previously been a member of Outokumpu Oyj's Board of Directors, and his position as head of the energy unit in the Ministry responsible for the consideration of nuclear plant building framework principles put him in an untenable situation and had, under section 28(7) paragraph 1 of the Administrative Procedure Act, compromised the impartiality of government action.

The Deputy Chancellor of Justice stated in his decision issued in March 2010 that the Ministry of Finance had breached the principles of good governance in the implementation of imported car tax. The Ministry had not implemented legislative changes to the imported car tax at its own initiative. Changes were only implemented after the European Court of Justice and Finland's own courts had ruled on private individuals' complaints on car tax. The Deputy Chancellor of Justice stated that well-prepared and timely legislative changes to the domestic car tax legislation, as required by the European Court of Justice, would have reduced the legal uncertainty and a large number of appeals.

The former Prime Minister, Matti Vanhanen's involvement in granting RAY profits to Nuorisosäätiö

The ruling by the Chancellor of Justice Mr Jaakko Jonkka on 16 September 2010, document numbers OKV/1280/1/2009 and OKV/1362/1/2009

Institution of proceedings

Complainants had written to the Chancellor of Justice on 25 September 2009 and 8 October 2009, alleging that Prime Minister Matti Vanhanen might have been disqualified from participating in the Cabinet plenary sessions where RAY (the Slot Machine Association) funding had been granted to the Nuorisosäätiö foundation.

The complainants had referred to press articles, according to which Mr Vanhanen had been involved in taking decisions on granting RAY funds to the Nuorisosäätiö foundation between 2004 and 2009, even though he had been the chairman of the foundation until 2003 and received election funding from it, not only at the time, but also after 2003, when he had received over 23,000 Euros for the 2006 Presidential election campaign.

The complainants argued that Mr Vanhanen should have disqualified himself, because he had received election funding from Nuorisosäätiö.

The complainants asked the Chancellor of Justice to investigate whether Prime Minister Vanhanen had acted lawfully, and whether Nuorisosäätiö had received the grant because it had funded Mr Vanhanen's campaign, and to take any appropriate measures.

I would like to note that the issue was widely discussed in the media between 2009 and 2010.

Ministerial legal liability

The legal responsibility of Cabinet members for official acts is divided between criminal liability, under the Act on the High Court of Impeachment and Dealing with Matters of Ministerial Liability (196/2000, later referred to as the Ministerial Liability Act), and liability for other forms of unlawful action, which is assessed by the highest supervisors of legality.

Under section 108(1) of the Constitution on the Chancellor of Justice of the Government, the Chancellor of Justice should oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice should also ensure that the courts of law, other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor of Justice monitors the implementation of basic rights and liberties and human rights.
Supervision of legality carried out by the Chancellor of Justice, as described in the Constitution, is prescribed in more detail in the Act on the Chancellor of Justice of the Government (193/2000). The most important provisions of the Act are included in sections 4 to 6.

Section 4 prescribes that the Chancellor of Justice must investigate a matter if there is any reason to suspect that a person, authority or other entity has acted unlawfully or failed to fulfil their duties, or if deemed necessary for other reasons by the Chancellor of Justice.

Under section 5, when the Chancellor of Justice receives a complaint or a matter is brought to his attention through some other means, information considered necessary by the Chancellor of Justice should be obtained. If there is any reason to believe that the case should be investigated by the Chancellor of Justice and is covered by his oversight powers, a person, authority or other entity should be given an opportunity to be heard.

Section 6 prescribes that if a civil servant, government employee or any other person in a public role has acted unlawfully or failed to fulfil their duties, the Chancellor of Justice can issue a notice for future reference, if he considers that there are no grounds for prosecution. If appropriate, the Chancellor of Justice may urge the party in question to follow procedures that comply with the law or the principles of good governance.

The procedure for the afterwards assessment of supervision of legality of ministerial duties is similar to that for the supervision of the authorities, save that it also involves the acertainment of possible criminal liability. [10]

Under section 60(2), Ministers are responsible before Parliament for their actions in office. Chapter 10 of the Constitution on supervision legality includes provisions on ministerial legal responsibilities. Section 115(1), which deals with the initiation of a matter concerning the legal responsibility of a Minister, prescribes that an inquiry into the lawfulness of the official acts of a Minister may be initiated by the Constitutional Law Committee on the basis of:

1. A notification submitted to the Constitutional Law Committee by the Chancellor of Justice or the Ombudsman;
2. A petition signed by at least ten members of Parliament; or
3. A request for an inquiry addressed to the Constitutional Law Committee by another Parliamentary Committee.

Under subsection 2, the Constitutional Law Committee may also open an inquiry into the lawfulness of the official acts of a Minister at its own initiative.

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[10] Supervision of the government in more detail by Jonkka: Oikeuskansleri valtioneuvoston valvojana, p. 99-118, and in particular, p. 114-116. In the commemorative publication for Mikael Hidén. Suomalainen Lakimiesyhdistys (Finnish Lawyers' Association), 2009.

Section 116 of the Constitution concerning the preconditions for the prosecution of a Minister prescribes that charges may be brought against a Member of the Government if they have, intentionally or through gross negligence, fundamentally contravened their duties as a Minister or otherwise clearly acted unlawfully in office. Under section 114 the Constitution, a charge against a Member of the Government for unlawful conduct in office is heard by the High Court of Impeachment, as provided in more detail by an Act (the aforementioned Ministerial Liability Act). The decision to bring a charge is made by Parliament, after having obtained an opinion from the Constitutional Law Committee concerning the unlawfulness of minister's actions.

Section 116 of the Constitution is not an independent penal provision as such, and any suspected criminal liability is subject to fulfilment of the constituent elements of an offence, such as those under chapter 40 of the Criminal Code (as explained in the Government Bill No. 1/1998 vp p. 171, which lead to the amendment of the Constitution).

Assessment of a Cabinet member's criminal liability is based on provisions in chapter 40, sections 11 and 12, of the Criminal Code. Chapter 40, section 11(2) of the Criminal Code defines a member of the Cabinet as a person elected to a public office. Chapter 40, section 12(1) regarding the scope of application of the Criminal Code prescribes that the provisions of the chapter on public officials also apply to a person holding a public elected office.

Provisions under the Constitution and Ministerial Liability Act mean that the Chancellor of Justice does not have the competence to launch a pretrial investigation of an alleged criminal offence in office by a member of the Cabinet. The launch of a pretrial investigation can only be carried out at the discretion of the Constitutional Law Committee.[11] The Chancellor of Justice may, if all necessary legal requirements have been fulfilled, submit a notification to the Constitutional Law Committee, in accordance with section 115 of the Constitution.

Considerations of the matter

Documentary evidence

To assess the case, I obtained the documents mentioned below. First of all, I obtained all of the Government plenary session records for the years 2004-2009 in which the Cabinet had discussed the distribution of RAY profits.

In addition, I received information and documentation gathered during the assessment of the Nuorisosäätiö foundation's activities in relation to its use of funds and distribution of election funding.

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11 This is the prevailing position according to current legislation. I have personally advocated this position, for example, in my article on the initiation of pretrial investigations titled "Valittuja kysymyksiä esitutkinnan aloittamisesta ja kohdentamisesta", p. 78-81, in the publication "Rikosoikeudellisia kirjoituksia VIII". Suomalainen Lakimiesyhdistys (Finnish Lawyers' Association) publications, A-sarja A No 268, 2006, and in the article "Esitutkintalain, pakkokeinolain ja poliisilain kokonaisuudistus". Committee Report 2009:2. The Ministry of Justice 2009 p. 293-294. [It should also be noted that this interpretation has subsequently been presented to Parliament in the Government Bill in October 2010 HE 222/2010 vp p. 178, regarding the reform of pretrial investigations and coercive measures legislation. 178. The Parliamentary Constitutional Law Committee issued an opinion 66/2010 on the Bill and said: "The right of the highest supervisors of legality to launch a pretrial investigation of issues concerning ministerial responsibility is unclear. The Committee considers that the interpretation of the Bill's grounds go too far in this respect." The committee therefore considered it necessary that, "the Government take steps to clarify the authority of the highest supervisors of legality."]

Documentary evidence was submitted by the National Board of Patents and Registration of Finland, RAY (the Slot Machine Association) and the Housing Finance and Development Centre of Finland, among others.

Assessment of the above-mentioned and further documents revealed, inter alia, the following:

Plenary session records show that Matti Vanhanen had chaired Cabinet plenary sessions between 2004 and 2009 when decisions on distributing RAY profits were made.

The National Board of Patents and Registration examined the way in which Nuorisosäätiö had been involved in funding the campaigns of local or national election candidates, and to what extent the foundation's assets had been used for election funding, particularly between 2005 and 2008.

The National Board of Patents and Registration assessed the foundation's activities concerning election funding and found that according to the foundation's by-laws, it was not entitled to make election donations and that its assets could not be used to support the campaign of an election candidate. The National Board of Patents and Registration did not have the means to determine whether the activities of the foundation's Board of Directors had caused any damage to the foundation. Therefore, the National Board of Patents and Registration requested in a letter dated 7 January 2010 that the National Bureau of Investigation take steps to examine whether the management of the Nuorisosäätiö foundation might constitute an offence, as the foundation had between 2005 and 2009 made some compensated purchases related to election funding.

RAY audited the use of active RAY grants received by the foundation between 2005 and 2009, as well as the foundation's general and financial administration.

The National Bureau of Investigation has launched investigations into election funding provided by the foundation, as well as into the foundation's other activities. I have received information on the extent and targeting of these investigations from the NBI.

The Nuorisosäätiö foundation was registered with the Register of Foundations on 10 March 1962, and is governed by the Foundations Act and its own by-laws.

Under the Foundations Act, the by-laws of a foundation shall contain the purpose of the foundation and the means of carrying out that purpose (section 4, subsection 1 (3)). According to the Nuorisosäätiö foundation by-laws, the purpose of the foundation is to carry out youth social work and, in particular, develop youth education and support the independence of young people. To fulfil its purpose, the foundation lets apartments to young people on social grounds, provides social advice, education and counselling, and organises supervised recreational activities. To support the running of its operations, the foundation may build and own property necessary for its operations, own shares, receive grants, donations and wills, and after obtaining appropriate licences, run raffles and fund-raising campaigns.

Section 10(2) of the Foundations Act prohibits the lending of the foundation's assets to members of the foundation's Board of Directors, or to any other person included in the foundation's inner circle or their close relatives. The above provision has been interpreted also to cover any unconditional donation of assets to the foundation's inner circle.

Matti Vanhanen had served as a Nuorisosäätiö board member, vice chairman and chairman between 1981 and 2003.

RAY grants received by the Nuorisosäätiö foundation

Matti Vanhanen became a minister in Anneli Jäätteenmäki's government in 2003, formed his own first government later the same year, and again after the 2007 parliamentary elections. Once a minister, Vanhanen resigned from the Nuorisosäätiö Board of Directors.

Cabinet plenary session records show that sessions chaired by Prime Minister Vanhanen on 5 February 2004, 3 February 2005, 1 February 2006, 1 February 2007, 31 January 2008 and 29 January 2009 granted support to the Nuorisosäätiö foundation on the submission of the Ministry of Social Affairs, and can be verified from memorandums and RAY grant proposals attached to the relevant plenary session agendas. Overall, the foundation received grants of more than €16 million of which a total of just over €1.4 million was by way of general state support.

According to a RAY audit report dated on 28 October 2009, the Ministry of Social Affairs and Health made a decision on 16 November 2009 to claim back grants of over 69,000 Euros.

Nuorisosäätiö election funding received by Matti Vanhanen

Over the period of 2004 to 2009, Finland held three elections: Presidential elections in 2006, general elections in 2007, and local elections in 2008. Out of these three elections, the inquiry was focused on the 2006 Presidential elections. In the elections, Matti Vanhanen was the Finnish Centre Party candidate. The Centre Party's electoral organisation included the Kansainvälinen Suomemme ry, Our International Finland association (later referred to as Our International Finland or the association).

The association was originally registered in the Register of Associations on 17 September 1987 under the name of Suomalainen Suunta ry. The association's name change was registered on 5 July 2005.

The association donated 280,000 Euros to the Centre Party of Finland, which was included in the Party's 2006 Presidential election financial statement dated 30 March 2006. The statement did not specify how the total amount was composed. Publicly it was claimed that a grant given by Nuorisosäätiö to the association would have been the second or third largest amount of money the association had received.

Publicly it was also claimed that Nuorisosäätiö had been involved in supporting Mr Vanhanen's Presidential campaign in 2005 and 2006 by making various purchases from the Our International Finland association (such as books, paintings, and seminar tickets), for a total of 17,860 Euros. In addition, a company called Nuorisoasuntojen Isännöinti Oy, which was fully owned by the Nuorisosäätiö foundation, affiliated to its operations, and responsible for the maintenance of the foundation's properties, had made a donation of 5,500 Euros to Vanhanen's election campaign. The total of these sums comes to 23,360 Euros.

The RAY audit report of 28 October 2009 stated that all the members of the Board of Directors of the Nuorisosäätiö foundation's affiliate company Nuorisoasuntojen Isännöinti Oy were also members of the foundation's Board of Directors, and in addition, the foundation's representative and the company managing director were one and the same person.

The foundation had reportedly previously donated about 5,000 to 6,000 Euros to Mr Vanhanen's election campaign during the period in which he was still a member of the foundation's board of directors. There is no further clarification on the timing of this donation.

Hearing of Matti Vanhanen

Matti Vanhanen has made two written submissions on the matter. The first request for clarification was sent to him on 11 March 2010. Mr Vanhanen submitted his reply on 8 April 2010. The second request for clarification was sent to him on 25 May 2010. Mr Vanhanen submitted his reply on 8 June 2010.

Mr Vanhanen said he had sought to the best of his ability to abide by the disqualification legislation and denied having acted in an unlawful manner.

Assessment of Matti Vanhanen's actions

Starting point for assessment

The complaint received by the Chancellor of Justice referred to a situation which can be outlined as follows: Since the 1960s, the Nuorisosäätiö foundation has applied for RAY grants distributed by Government plenary sessions. Matti Vanhanen served as a Nuorisosäätiö foundation board member, vice chairman and chairman between 1981 and 2003. After becoming a member of the Cabinet in 2003, Mr Vanhanen had been involved in distributing RAY funds to the Nuorisosäätiö foundation in Government plenary sessions between 2004 and 2009. Before Mr Vanhanen was a minister, the foundation had donated over 5,000 Euros to his various election campaigns. During the 2006 Presidential elections, the foundation and its affiliated company had donated over €23,000 to Mr Vanhanen. The donation had been in the first instance addressed to the Our International Finland association and from there channelled to the Centre Party of Finland, which at the time of the election was chaired by Mr Vanhanen, also the party's Presidential candidate. The party's election funding statement for its candidate in the 2006 elections includes a donation of €280,000 in total from the association (Our International Finland). The statement did not specify how the total had been calculated. It was publicly alleged that the donation given by Nuorisosäätiö was the second or third largest amount of support received by the association.

Put simply, it involved a situation in which the foundation had donated funds to Mr Vanhanen's 2006 Presidential election campaign, and where Mr Vanhanen as the Prime Minister, in Government plenary sessions in 2006 and later, had distributed funds out of RAY proceeds to the very same foundation. The legal assessment of the case must be primarily based on the Administrative Procedure Act and its provisions on disqualification.

Disqualification assessment

Under section 2 of the Constitution, in all public actions, the law should be strictly observed. Public administration must be managed in such a way that does not compromise public faith

in the impartiality and legality of the process. As a result, it is not enough that officials consider themselves to be acting impartially. The rules of good governance, as prescribed in section 21(2) of the Constitution, mean that the actions of officials participating in the consideration of and decisions relating to administrative matters do not raise any concerns regarding the impartiality and objectivity of public administration in the eyes of the public.

The provisions on disqualification have been designed to safeguard the objectivity of consideration and settlement of administrative matters. Provisions relating to the disqualification of officials have a twofold significance. On the one hand, they reduce the opportunity for an individual to participate in the handling of a matter in cases in which their actions could be improperly influenced by personal circumstances. On the other hand, the provisions are aimed at increasing public confidence in the impartiality and objectivity of the administrative process, which requires that the consideration and settlement of administrative matters must take place only on acceptable objective criteria.

The Government Act (175/2003) is a key piece of legislation governing governmental decision-making, but it does not include specific provisions for the disqualification of ministers. The general law, i.e. the Administrative Procedure Act (434/2003), which came into force on 1 January 2004, and its provisions on the disqualification of officials are applicable to a minister's right to participate in the proceedings of the Government plenary session. This practice is based on section 27(2) of the Administrative Procedure Act, which prescribes that the provisions on the disqualification of officials apply also to members of multi-member bodies and thus, to members of the Government (Government Bill 72/2002 vp to the Parliament for the Administrative Procedure Act and the law on amending the Administrative Judicial Procedure Act, p. 80).

Under section 27(1) of the Administrative Procedures Act, a minister shall not participate in the consideration of a matter either as a decision-maker or rapporteur, if disqualified. This means that the disqualification may also apply to the consideration of an individual administrative matter. According to section 27(1) of the Administrative Procedure Act, the provision also applies to the handling of administrative matters in Government and its ministries. The distribution of RAY proceeds in the Cabinet plenary session must be considered an example of the handling of an administrative matter, as referred to in the above provision.

Because the provisions on disqualification under the Administrative Procedure Act apply to ministers, under section 29(2) of the said act, ministers shall examine and decide themselves as to their disqualification. The Prime Minister's office compiled the Ministerial Code (2003 and 2007), which also reminds members of the Cabinet of this obligation. The Code emphasises that ministers themselves must examine their disqualification from work performed both in ministries and in Government plenary sessions, and that they should expressly report their disqualification at the relevant time.

Grounds for disqualification relevant to administrative matters are listed in section 28 of the Administrative Procedure Act. The provision lists six separate types of grounds for disqualification. The last, seventh paragraph contains a general clause of disqualification. Under the seventh paragraph, disqualification may be considered to arise in circumstances other than those explicitly set out in paragraphs 1 to 6.

Matti Vanhanen's case would primarily seem to fall under the general clause of disqualification.

Section 28(1), paragraph 7 of the Administrative Procedure Act prescribes that an official is disqualified if their "impartiality is compromised for another special reason".

Unlike the specific grounds for disqualification as described in paragraphs 1 to 6 in section 28 of the Administrative Procedure Act, which are based on formal criteria and thus more clear-cut in interpretation, the general clause concerning compromised impartiality described in paragraph 7 has been designed to be a provision that is looser, more flexible and more open to subjective assessment. Interpretation of this ground for disqualification, as with all other grounds, is based on judicial discretion. The preambles to the Government Bill 72/2002 vp, which led to the enactment of the Administrative Procedure Act, did not address the content of the provision in this regard.

The drafting of the law was influenced by the fact that the general clause was also included word-for-word in the previous Administrative Procedure Act (598/1982), section 10(1), paragraph 6. The inclusion of the clause in the previous Act on Administrative Procedures was legally justified at the preparatory stage by the impossibility of comprehensively defining all possible circumstances in which an official's relationship to the matter in hand or a party might compromise their impartiality. The Government Bill for the previous Administrative Procedure Act (HE 88/1981 vp) and the preamble to the proposal for the general clause included the following:

"Because disqualification fulfilling the criteria described in this preamble would arise only if trust in official impartiality was compromised for some special reason, the proposal requires that such a reason should usually be perceivable by an outsider and that the amount of damage it would cause to impartiality should be roughly the same as the specifically defined grounds for disqualification. Thus, in the application of the general clause, particular attention must be paid to compliance with the disqualification rules, so that public confidence in the impartiality of the officials will be strengthened, and that officials cannot disqualify themselves for reasons that are irrelevant to disqualification."

Disqualification under the general clause in section 28(1) paragraph 7 of the Administrative Procedure Act arises when impartiality is compromised for a special reason (other than described in section 28(1) paragraphs 1 to 6). The use of 'compromised impartiality' as grounds for disqualification must be assessed objectively according to the characteristics of each individual case. Taking into account the wording of the Act and the Government's preamble to its previous Bill, the provision requires discretion by the person who is to apply it to their circumstances, and they need to evaluate and weigh the facts of the case to assess what risk they may pose to impartiality and whether disqualification has actually arisen.

The significance of the special disqualification reason as defined in the general clause must be comparable to the specific provisions in section 28 of the Administrative Procedure Act and of such a nature that an outsider may come to learn of the reason, even if it was not widely known at the time. It would be impossible to compile an exhaustive list of special reasons that might jeopardise trust in the impartiality of an official. The most important function of the general clause is to ensure the objective impartiality of official procedures, and in particular, to ensure public confidence in the objectivity and independence of those procedures. [12]

[12] Laakso-Suviranta-Tarukannel: Yleishallinto-oikeus. University of Tampere, Department of Law 2006 p. 199-200, and Olli Mäenpää: Hallintolaki ja hyvän hallinnon takeet. Edita 2008 p. 138-139.

The Constitutional Law Committee has ruled on problems surrounding ministerial disqualification, for example, in its report No. 5/1990 vp on the Government's 1988 annual report. The report includes quite an extensive chapter on the disqualification of a Cabinet member, including the following statement by the Committee on the significance of the disqualification rules (p. 1): "One of the key aims in complying with the disqualification principle in Government and different ministries is to foster public confidence in the impartiality of ministers' actions. From this perspective, it is only right that the Administrative Procedure Act (repealed) be applied to the members of the Cabinet." In its report No. 5/1993 vp regarding a Cabinet member's unlawful official acts, the Constitutional Law Committee emphasised that a minister's personal financial interests may lead to situations in which the undertaking of ministerial tasks is likely to undermine public trust in their impartiality, and this should be borne in mind in the interpretation and application of disqualification rules. The committee said in this context (p. 14): 14): "This approach to public trust had a huge influence on the content of the disqualification rules under the Administrative Procedure Act (repealed), and its purpose was to protect that trust."

Following the receipt of complaints and requests for statements, the Office of the Chancellor of Justice has considered financial benefits in connection with the potential disqualification of Cabinet members. These include the following cases: The Chancellor of Justice had recommended that the Minister of Transport and Communications not use a free pass received from the Finnish Bus and Coach Association (an express bus ticket worth FIM 350). The Minister returned the free ticket on the grounds that no doubt should arise regarding his ability to make independent decisions concerning public transport. The Minister of Trade and Industry, who owned shares worth FIM 500,000 in a major wood-processing company, was disqualified from processing an investment subsidy application by that company jointly with another large wood-processing company. The Minister of Culture was disqualified from dealing with a subsidy for a golf course, the shares of which were owned by the Minister's close family members (the Chancellor of Justice's ruling of 12 June 2002, DNR OKV/12/50/2002).

Financial benefits received by officials are recognised in the legal literature as a typical situation that may jeopardise public confidence. Mäenpää, for example, writes: "If an official receives unusually generous hospitality or other significant financial benefits, it is without doubt subject to the general clause of disqualification, and may also constitute bribery." [13]

The mere fact that a financial benefit has been received as election funding does not preclude the application of the disqualification provisions of the Administrative Procedure Act. In certain cases, the receipt of election funding may lead to disqualification from administrative decisions. Even if funding is channelled through various election organisations, it will in the end benefit the candidate. Thus, all the elements that may undermine public confidence are there. The Act on a Candidate's Election Funding (414/2000) is aimed at increasing transparency in election funding, not interfering in administrative procedures. The Government Bill preceding the Act (HE 8/2000 vp p. 8-9) states that the purpose of the Act is "to expose the potential interests created by election funding". The Government Bill goes on: "Interest is different from disqualification. The latter is a legal concept to

[13] Mäenpää: Hallintolaki ja hyvän hallinnon takeet. 139. See also Mäenpää: Hallinto-oikeus. WSOY Lakitieto 2003, p. 284.

describe the situations in, and criteria by, which a decision-maker cannot and must not participate in any stage of a decision-making process. --- Interest does not usually prevent participation in decision-making in a similar way."

The fact that Mr Vanhanen, on the one hand, had received a donation of over 23,000 Euros from the Nuorisosäätiö foundation for his election campaign, and then on the other hand, had repeatedly been involved in the distribution of millions of Euros worth of funds to the same foundation, created a situation which compromised confidence in his impartiality, as prescribed in section 28(1) paragraph 7 of the Administrative Procedure Act. Thus, Mr Vanhanen had been disqualified from participating in the decision-making on the distribution of RAY funds in Government plenary sessions between 2006 and 2009. Because section 27 of the Administrative Procedure Act prescribes that an official should not participate in the consideration of a matter if they are disqualified, Mr Vanhanen had acted in an unlawful manner.

In assessing the overall culpability and the level of culpability of Matti Vanhanen's actions, we must decide whether it was possible for him to have been aware of the donation and the amount of donation he had received while he was involved in making decisions on the distribution of funds, or, whether he had had a duty at least to clarify these points. These questions lead us also to assess Mr Vanhanen's actions under the Criminal Code.

The need for criminal judicial assessment

Based on the material available to the Chancellor of Justice obtained through means of legal supervision, it has not been possible reliably to assess whether the complaints regarding Mr Vanhanen's actions fulfil the constituent elements of an offence in office. The assessment of criminal liability must be based on an appropriate pretrial investigation. That is why, within my competence, I can only present here some general conclusions based on objectively verifiable facts. [14] The purpose of the scrutiny is therefore not to take a position on whether Mr Vanhanen was guilty of a punishable offence, but to determine whether his conduct should be scrutinised in the light of the provisions on offences in office, or whether it would suffice to consider his disqualification from the viewpoint of legal supervision.

The most likely applicable penal provisions are probably under chapter 40, sections 9 and 10 of the Criminal Code on breach of official duty or negligent breach of official duty.

The text of these provisions, including the amendment of 12 July 2002/604, reads:

Criminal Code, chapter 40, section 9. Breach of official duty. If a public official, when acting in his or her office, intentionally in a manner other than provided above in this chapter breaches his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effects and the other circumstances connected with the act, is not de minimis, he or she shall be sentenced for breach of official duty to a fine or to imprisonment for a maximum of one year.

[14] For the sake of clarity, I also include the following: As Vanhanen had submitted the requested reports for the process of supervision of legality under section 111 of the Constitution, and not for a criminal investigation process, I preferred not to use his reports for criminal judicial review, so as not to compromise his right to remain silent in criminal proceedings.

The public official may also be sentenced to dismissal if he or she is guilty of the offence referred to in subsection 1 by continuously or fundamentally acting in breach of his or her official duties, and the offence demonstrates that he or she is manifestly unfit for his or her duties.

Criminal Code, chapter 40, section 10. Negligent breach of official duty. If a public official, when acting in his or her office, through carelessness in a manner other than that referred to in section 5, subsection 2, breaches his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effects and the other circumstances connected with the act, is not de minimis, he or she shall be sentenced for negligent breach of official duties with a warning or a fine.

First of all, we must assess whether Mr Vanhanen's participation in the decision-making on the distribution of funds could have "breached his official duty based on the provisions or regulations to be followed in official functions."

Under section 27 of the Administrative Procedure Act, an official should not participate in the consideration of a matter, if they are disqualified. The Parliamentary Constitutional Law Committee emphasised in its report No. 5/1993 that a breach of disqualification rules in a ministerial role may result in a breach of official duty under the Criminal Code. The High Court of Impeachment ruling of 29 October 1993 regarding a breach of official duty by a former Minister of Trade and Industry, stated the following: Section 10(1) paragraph 6 of the Administrative Procedure Act (repealed), includes a fundamental code of conduct, according to which an official should not in his official duties handle issues which due to connections to his own personal affairs could compromise their impartiality. The obligation to refrain from handling certain issues if disqualified is regarded a typical official duty based on regulations governing official activities.[15] The legal literature also states that the obligation to refrain from handling certain issues if disqualified is regarded a typical "official duty based on regulations governing official activities."[16]

Above, I found that Mr Vanhanen was disqualified on the basis of the general clause under chapter 28(1) paragraph 7 of the Administrative Procedure Act. By participating in decision-making in plenary session as described above, Mr Vanhanen would have therefore acted contrary to his official duty based on regulations governing official actions.

However, the general disqualification clause in the Administrative Procedure Act is relatively open to interpretation, so one could ask whether the official obligation is defined in it with adequate precision. The criminal judicial principle of legality restricts the possibility of using obligations included in otherwise broad general provisions as a basis for assessing liability to punishment (e.g. Lappi-Seppälä, et al: Rikosoikeus. WSOYpro 2009 p. 1129-1132).

I would like to point out, however, that the recent Supreme Court ruling (KKO 2008:95) deemed applicable a similar general disqualification clause under the Code of Judicial Procedure as the determining standard for criminal behaviour. The above-mentioned High Court of Impeachment ruling stated the same regarding the general disqualification clause under the Administrative

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15 Parliamentary Ombudsman's report 1993 p. 49. The provision under the Administrative Procedure Act (repealed) mentioned in the High Court of Impeachment ruling corresponds to chapter 28(1) paragraph 7 of the current Administrative Procedure Act.

16 Pekka Viljanen: Virkarikokset ja julkisyhteisön työntekijän rikokset. Published by Lakimiesliiton kustannus 1990 p. 457. Similarly in Frände-Matikkala-Tapani-Tolvanen-Viljanen-Wahlberg: Keskeiset rikokset. Edita 2006 p. 790-791.

Procedure Act (repealed) section 10(1) paragraph 6. In addition, I note that the same content in section 28(1) paragraph 6 under the current Administrative Procedure Act has consistently been interpreted to mean that any receipt of financial benefit may disqualify the recipient from making administrative decisions regarding the donor.[17] Especially in a situation in which an administrative decision-maker might distribute public funds to an organisation that has given them even modestly significant amounts of financial support, seems objectively thinking to compromise confidence on impartiality in such an obvious way that there can hardly be any doubt about what official duties require. The fact that the financial benefit may have been be received in the form of election funding, cannot be seen to alter the official duties regarding administrative decision-making.

In assessing intent (Criminal Code 40 [9]) or negligence (Criminal Code 40 [10]), which are a requirement to fulfil the constituent elements of a crime, it is first of all essential to consider whether Mr Vanhanen was aware of the Nuorisosäätiö donation that would disqualify him, or whether he was at least indifferent to the possibility of such a donation.

In view of Mr Vanhanen's position as a long-standing former senior officer of Nuorisosäätiö, and Nuorisosäätiö's long-standing role as an election donor, there are valid reasons to believe that in deciding on the distribution of RAY proceeds, Mr Vanhanen must have known that he had received at least some funding from Nuorisosäätiö to support his election campaign. For the same reason, there are strong reasons to believe that Mr Vanhanen might have expected the foundation to support its former chairman's Presidential campaign, even with quite a significant financial contribution.

On the other hand, it should be noted that it is not possible for Presidential election candidates to be aware of all of their supporters and the amounts they have received from them as donations. However, this does not exclude the fact that based on his former position in, and his continuing close links to, the foundation, Mr Vanhanen would possibly have been much better informed than normal about Nuorisosäätiö funding in particular. This also goes to the question of whether Mr Vanhanen could have been considered to have had a duty to investigate the matter.

Breach of official duty (as well as negligent breach) is an non-punishable offence if the act, taking into account its harmfulness and all other relevant aspects, is in the round considered as minor. According to drafts of the legislation, minor acts include breaches of procedural rules that do not have any significant importance in the appropriate handling of official duties or private interests (LaVM 7/1989 vp p. 2 and Rikosoikeus p. 1140).

Participation in a Government plenary session in the manner described above may perhaps be considered a minor error of form – especially when, based on the available evidence, Mr Vanhanen cannot be shown to have attempted to influence the nature of the decision in any inappropriate way, and when in the situation in question several routine decisions were made at the same time, approving grants to a number of recipients.

Yet on the other hand, it should be noted that for disqualification to arise decision-making would not actually have to be influenced by inappropriate motives. The purpose of the general disqualification clause is to secure public confidence in the impartiality of management of public

[17] The legal literature unambiguously indicates that any financial benefits offered to an official by any society "can undoubtedly also be covered by the general clause"; Mäenpää: Hallinto-oikeus p. 284 and Hallintolaki ja hyvän hallinnon takeet p. 139.

duties. A case in which the minimum criteria for the constituent elements of an offence are fulfilled under the disqualification provisions in the Criminal Code, court practice has considered how seriously the act compromises trust in the impartiality of official actions (the Supreme Court 2001:54, and Rikosoikeus p. 1141). The matter should also be considered from a broader perspective. Due exercise of public power is an essential feature of a state ruled by law, and at the same time one of its prerequisites. Just as important is that people should have trust in the due exercise of public power and its impartiality. In this sense, a decision-maker in the Prime Minister's position who repeatedly distributes public funds to a significant financial supporter of their own election campaign, is likely to endanger trust in the exercise of the highest public power. [18]

Ruling

For the above reasons, in my opinion the breach of disqualification rules by Mr Vanhanen should also be considered in the light of the constituent elements for an offence. Since a supervisor of legality has no further means to carry out a criminal assessment, the only way to do this and to obtain a thorough analysis of Mr Vanhanen's actions, is to refer the matter to the Parliamentary Constitutional Law Committee.

The question is whether there are sufficient legal grounds to notify this case to the Constitutional Law Committee, as described in section 115 of the Constitution.

Section 115 of the Constitution does not expressly stipulate the required "threshold" for notification by the Chancellor of Justice. The provision simply states that an inquiry into the lawfulness of the official acts of a Minister may be initiated in the Constitutional Law Committee on the basis of a notification submitted to the Constitutional Law Committee by the Chancellor of Justice. The Government Bill on the constitutional reform says (HE 1/1998 vp p. 168; see also PeVM 10/1998 vp p. 33): "If a minister's unlawful conduct might entail prosecution in the High Court of Impeachment, the Chancellor of Justice may submit a notification in accordance with section 115 of the Constitution to the Parliament's Constitutional Law Committee." From this follows the principle, already apparent from the context, that the notification is not an end in itself, but relates to the investigation of ministerial responsibility, and thus the Chancellor of Justice must present a concrete and well-founded suspicion of a procedure in breach of section 116 of the Constitution." [19]

Section 116 of the Constitution provides the preconditions for prosecuting a minister by parliamentary decision. It provides that the prosecution has a higher than normal threshold: "A decision to bring charges against a Member of the Cabinet may be made if he or she has, intentionally or through gross negligence, fundamentally contravened his or her duties as a Minister or otherwise clearly acted unlawfully in office." Government Bill states (HE 1/1998 vp p. 171): "The starting point must be that an accusation against a minister should not be used, for example, to address minor errors of procedure." Specific conditions for the enforcement of ministers' criminal responsibility have been

[18] The Parliamentary Constitutional Law Committee has repeatedly stressed the importance of complying with disqualification provisions in Governmental decision-making, for example, in PeVM 4/1990 vp, PeVM 5/1990 vp and PeVM 5/1993 vp. The same has been highlighted in the legal literature, for example, in Matti Niemivuo –Marietta Keravuori: Hallintolaki. WSOY Lakitieto 2003, p. 218.

[19] Jonkka: Oikeuskansleri valtioneuvoston valvojana, p. 116).

justified by the need to protect the political system and the efficient functioning of Government. In the same context, the purpose of the threshold has been clarified as follows: "The threshold for bringing a prosecution has not, however, been designed to protect individual ministers, but more widely to guarantee the efficient functioning of government."

Taking into account the differing legal significance of a notification by the Chancellor of Justice and a decision by Parliament on the handling of a matter within ministerial responsibility (former: notification of the initiation of investigation/latter: prosecution in the High Court of Impeachment), and the fact that the notification and the prosecution will occur at different stages of the investigation and are based on different material, it is not possible or appropriate to anticipate at the time of submission of the notification whether the preconditions for bringing a prosecution will be fulfilled. It is enough – as the grounds for the provision indicate – that the act is such that it could proceed to prosecution in the High Court of Impeachment. [20]The purpose of a notification regarding such an alleged act is to initiate an investigation so that preconditions for the prosecution of a minister may be established. If the Chancellor of Justice undertook an assessment of whether the preconditions under section 116 of the Constitution were fulfilled, he would assume the role of a prosecutor – and much too prematurely. The principles behind the consideration of the prosecution threshold under section 116 of the Constitution to some extent influence the consideration of whether to submit a notification, yet in my opinion they do not have independent significance at that stage.

The Constitution therefore only provides very loose criteria for submission of a notification. In considering whether sufficient grounds exist to submit a notification under section 115 of the Constitution, we ultimately need to weigh the legally relevant arguments for and against the notification. The system has been designed so that an in-depth examination and a comprehensive evaluation of a minister's legal liability requires that he matter be referred to the Constitutional Law Committee for investigation. In considering the submission of a notification, due consideration must also be given to the legal protection of the subject of the notification: the Chancellor of Justice must not initiate such an investigation lightly. The notification in itself may negatively affect the subject's reputation, even if the notification does not speculate as to their criminal guilt.

In considering whether to submit a notification, a balance should be struck between the interest in clarifying the issues in question, and the interest in affording an individual due legal protection, and these two interests should be weighed against each other.[21]The more important it is to initiate a thorough investigation into the matter, and the more likely it is that the measures available to the Constitutional Law Committee would bring significant insight into it, the more weight the interest to

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20 An act that has been judged punishable because of intent, may also be considered an act described in section 116 of the Constitution, when all other preconditions are fulfilled, if the offender has acted with "gross negligence". At least, the wording of the provision or the preparatory work do not preclude this interpretation. HE 1/1998 vp (p. 171) mm. includes: "--- incrimination would exclude cases which would have fundamentally breached a duty of a Cabinet member, but in which the offender's guilt should be regarded as relatively minor. The degree of imputability should be assessed according to the principles of general criminal law. "

21 On such weighing and its theoretical basis in more detail, see Jonkka: Syytekynnys. Suomalainen Lakimiesyhdistys (Finnish Lawyers' Association), 1991, in particular p. 167-172 and 248-296, as well as my article Syytekynnys ja syyttäjänrooli, in particular p. 987-992. Defensor Legis 2003. On practical applications of the weighting model, for example, in supervision of legality, may I refer to Jonkka: A Model for the Weighing and Balancing of Interests in the Prosecutor's Legal Discretion, in particular p. 251-260. In the publication: Procedural Law. Scandinavian Studies in Law. Volume 51 Stockholm 2007.

clarify the issues will have. By contrast, the weight attached to protection of an individual's legal rights is determined case by case, and as a rule militates against such notification.

In the following, I will give an insight into weight attached to the interest in clarifying the issues. The launch of a pretrial investigation – which is a prerequisite for a reliable criminal assessment – is an investigatory measure reserved solely to the Constitutional Law Committee.

The National Bureau of Investigation is currently pursuing an ongoing extensive pretrial investigation into the election funding provided by Nuorisosäätiö. The investigation covers the foundation's donations to certain Finnish Centre Party politicians and groups closely linked to the Party. The NBI investigation is at least structurally connected to the case in question. Donations received by Mr Vanhanen should be seen as part of the case currently the subject of pretrial investigation. In my opinion, if this context is not taken into account, we will not get a correct understanding of Mr Vanhanen's participation in the decisions on the distribution of funds to Nuorisosäätiö. The Chancellor of Justice has very limited measures available to draw connections between the above-mentioned pretrial investigation and the assessment of Mr Vanhanen's actions. [22] However, measures available to the Constitutional Law Committee would allow this.

The Nuorisosäätiö foundation has distributed significant amounts of money for political funding, without any reference to election funding in the foundation's by-laws. In less than the last ten years, the foundation has reportedly donated more than €100,000 to election campaigns. In using the measures available to me, I am not able to take a position on whether the foundation thus acted against the law. However, a pretrial investigation has been launched into the foundation's funding practice. As a former, long-standing member and chairman of the Nuorisosäätiö Board of Trustees, Mr Vanhanen must have been familiar with the foundation's by-laws [23] and known that the foundation was making such donations, because it is very likely that the funding practice would have been decided upon by the board, or in any event, with the consent of the board. It seems that the RAY proceeds have been used to fund a foundation which, according to its by-laws was a non-profit organisation for the public good, but which in reality – and at least to some extent to Mr Vanhanen's knowledge – regularly also financed party political activity. The significance of this particular aspect should be looked into in more detail in assessing Mr Vanhanen's decisions to distribute funds to the foundation.

In summary, I would like state the following: Bringing the actions of Matti Vanhanen, as discussed above, before Parliament's Constitutional Law Committee and its investigation would be likely to shed greater light on the clarification of ministerial responsibility, and would also allow for criminal judicial assessment. There is a genuine need for a thorough examination of the case, since it involves alleged unlawful action in the course of the exercise of significant power in society. In addition to further uncovering all the circumstances of the case, it should be borne in mind that the Parliamentary Constitutional Law Committee's investigation would be likely to diversify the consideration of these types of matters in future, and that the Committee's consideration would also include an assessment of legally acceptable limits for political activities. The whole weight of the individual's legal protection interest does not go against submission of a notification, as described in section 115 of the Constitution.

22 An assessment under legal supervision and pretrial investigations must not be mixed.

23 The Foundations Act, section 10(1): "The board of trustees shall attend to the affairs of the foundation in compliance with the law and the by-laws of the foundation."

Given the ongoing pretrial investigation into the Nuorisosäätiö foundation's election donations and public speculation about Mr Vanhanen's links to it, a thorough clarification of the matter would not be entirely negative for Mr Vanhanen's legal protection – especially when the other option would be to conclude the investigation with a decision reached by means available to supervision of legality. Thus, when we weigh the interest in clarifying the issues against the interest in affording an individual due legal protection, in my view the former has more weight.

Measures taken

For the above reasons, the submission by the Chancellor of Justice of notification to the Parliamentary Constitutional Law Committee, as per section 115 of the Constitution, regarding the legality of official actions of the former Prime Minister, Matti Vanhanen, is legally justified. That is why I completed the examination of the case under the processes available to me under supervision of legality, and submitted my ruling and all the material that I had gained to date to the Constitutional Law Committee, for the purpose described in section 115 of the Constitution.

Finally, I would like to add the following: Following my ruling, the investigation of the case was transferred to the Constitutional Law Committee, which is why I chose not to discuss the reports Mr Vanhanen submitted to me. In this way the Constitutional Law Committee has a genuine opportunity to decide on the publication of the investigation material, as well as the manner in which it may wish to use the reports acquired for the purposes of legality supervision.

Subsequent phases of the case

The Parliament's Constitutional Law Committee decided on 12 October 2010 to ask the Prosecutor General to take the necessary steps to initiate a pretrial investigation, as described under section 4 of the Act on the High Court of Impeachment and Handling of Ministerial Responsibility Issues. After the completion of the pretrial investigation, the Constitutional Law Committee issued report number 10/2010 vp on 16 February 2011, after having had access to case documentation and having received submissions, and concluded that "Mr Vanhanen, acting as a disqualified chairman of the Government plenary session, when decisions were being made on the distribution of RAY proceeds, negligently breached his official duties as described under chapter 40, section 10 of the Criminal Code, but that his actions were not grossly negligent. Thus, the requirement of imputability under section 116 of the Constitution is not fulfilled." The Committee declared its position as described in section 114 and said that "the former Prime Minister Matti Vanhanen has not acted unlawfully in his official duties in the case in question, as described in section 116 of the Constitution." The Parliament decided in the plenary session of 22 February 2011 that no charges would be brought against former Prime Minister Matti Vanhanen.

Securing the implementation of vehicle taxation in Finland

Description of the ruling by the Deputy Chancellor of Justice Mikko Puumalainen of 15 March 2010, DNR OKV/2/50/2008.

In recent years, the procedure for implementation of vehicle taxation by Customs, and processing delays in particular, have been the subject of repeated complaints filed with the Chancellor of Justice in Finland. Rulings given in response to the complaints often had to address the fact that the requirement to have a case dealt with without undue delay provided for in section 21 of the Constitution had not been duly fulfilled. At his own initiative, the Deputy Chancellor of Justice therefore decided to launch an investigation into the matter.

According to a report by the Ministry of Finance, at the end of 2007 there was a backlog of about 18,000 vehicle tax adjustment claims. Customs estimated that during 2010, they would be able to deal with the adjustment claims submitted in 2008 and 2009, as well as some of those submitted in 2010. According to the report, the aim was to reduce the average processing time to about nine months during 2010. By the end of 2011, the target processing time would be four months, and from the end of 2012 it would be between one and two months.

A legislative amendment to the appeal provisions of the Vehicle Tax Act (267/2008) came into force on 1 May 2008. According to the amendment, all adjustment claims against vehicle tax decisions had to be addressed to Customs, and only once Customs had given its decision would it be possible to appeal against it in a regional administrative court. The amendment did not reduce the workload at Customs, but it has managed to reduce the burden on administrative courts and speed up appeal processing times.

The Deputy Chancellor of Justice considered that the overall congestion in the vehicle tax appeal system at Customs and the administrative courts, which was due to uncertainties over the taxable value of vehicles, had weakened legal protection. As the administrative courts have had to commit resources to resolve vehicle taxation issues, longer processing times have inevitably also compromised legal protection in non-vehicle tax matters. Due to uncertainties, a number of vehicle taxation decisions have had to be corrected several times. The Ministry of Finance has implemented a number of legislative amendments following the Supreme Administrative Court rulings. However, the Ministry of Finance has taken necessary steps to bring the Finnish vehicle taxation system in line with European Union regulations and allocated adequate resources only after the latest EC Court of Justice ruling in 2009.

In his ruling, the Deputy Chancellor of Justice stated that according to section 21(1) of the Constitution, everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent body for the administration of justice. The basic right to good governance means that everyone has, at least in their own case, a right to demand review on the grounds of good governance and to expect that its key aspects will be present in the practical implementation of the administrative action. Compliance with the requirements of good governance also includes the primacy of European Union law and its prompt implementation.

Section 68 of the Constitution prescribes that in legal drafting and administrative organisation, each ministry, within its proper purview, is responsible for the preparation of matters to be considered by the Government and for the appropriate functioning of the administration. This also includes ministries' readiness to assess EU legal issues, and take the steps required to implement them at a national level.

The Deputy Chancellor of Justice considered that vehicle taxation regulation had not been implemented in accordance with good governance principles, and individual citizens and other interested parties had not been effectively afforded the rights to which they were entitled under Union laws. As a rule, the legislative amendments concerning vehicle taxation were made after judgments had been delivered by the courts in individual cases, leading to difficulty in anticipating legislation and undermining citizens' trust in the fairness of the taxation system.

The Deputy Chancellor of Justice considered that the provisions in the Constitution on administrative organisation, and the requirements of the Administrative Procedure Act on good governance, had not been duly fulfilled.

Similarly, insufficient consideration had been given to the direct legal effect on individuals afforded by the Articles of the Treaty on European Union. In practice, individuals had been forced to take action themselves in order to exercise the rights granted to them by the European Union, by following the legal procedure granted by the Union's judicial system, when in fact the Ministry of Finance had been responsible for ensuring the exercise of these rights as part of its responsibility for legislative preparation provided for in the Constitution.

For the reasons mentioned above, the Deputy Chancellor of Justice urged the Ministry of Finance to pay attention to compliance with the provisions regarding administrative arrangements and good governance.

The Deputy Chancellor of Justice stated that the measures planned and outlined in the Ministry of Finance report to cut processing times for vehicle taxation adjustment claims were appropriate. Increases in staff resources and measures to ensure the most efficient use of resources were the most important way to meet the requirement for the timely processing of claims. The most recent legislative changes also supported this objective. The Deputy Chancellor held, however, that it was still perhaps too early to evaluate the actual and lasting effects the resource increases and legislative changes had made to the functioning of the vehicle tax system and appeal claim processing times. Therefore, the Deputy Chancellor of Justice asked the Ministry of Finance to provide by 31 December 2010 an updated report on appeal processing times between 2009 and 2010. The requested report was received by the Office of the Chancellor of Justice on 20 December 2010.

6

Supervision of legality in State administration

General

As in previous years, the majority of complaints concerning the purview of the **Ministry of Justice** related to the activities of the courts. During the year under review, the Office of the Chancellor of Justice received 244 complaints regarding the activities of the courts, and provided a ruling on 257 complaints. Out of the complaints resolved during the year under review, eleven led to further measures being taken. They included one case in which the Chancellor of Justice asked the Supreme Court to overturn a judgment (OKV/335/1/2010). A large number of complaints received and resolved regarding courts of law dealt with the question of whether the basic and human right to a fair trial had actually been realised in practice. Other typical topics of complaint included delays in processing times, the conduct of judges and the overall treatment of different parties in a trial. In addition, the reasoning of the court often provoked complaints.

The number of complaints about other authorities under the purview of the Ministry of Justice was considerably fewer than those pertaining to general courts of law. For example, 71 complaints were received regarding prosecutors; 69 complaints on administrative courts; 51 complaints on debt recovery authorities; 38 complaints on special courts. Of the above groups, rulings that lead to measures being taken regarded the procedures of prosecutors and debt recovery authorities. Under the purview of the Ministry of Justice, a complaint regarding the procedures of the Data Protection Ombudsman also led to measures. In addition, in their own groups were reports of offences concerning judicial conduct, of which the Police informed the Chancellor of Justice, and notifications by appeal courts' to the Chancellor of Justice of circumstances which might lead to actions being brought against an official at the court of appeal. During the year under review, one case in the former group and two cases in the latter group led to measures. A case investigated based on a notification submitted by a court of appeal to the Chancellor of Justice led to the Chancellor's bringing charges against a district court office secretary and senior judge for negligent breach of official duty and a second charge against the office secretary for intentional breach of official duty. The review procedure for penal judgements and the errors noted therein are described in further detail later in this report.

The majority of complaints concerning the purview of the **Ministry of the Interior** related to police activities. Complaints regarding other authorities under the purview of the Ministry were various, most often regarding the actions of the Emergency Response Centre and immigration services administration. A total of 296 new complaints regarding police activities were received, and 313 complaints were resolved. As in previous years, the majority of both received and resolved complaints concerned procedures of the police as the pretrial investigation authority. The Deputy Chancellor of Justice issued a notice to the police regarding a complaint he had investigated which involved a physical search of a person under the Police Act. Complaints that did not result in measures most commonly related to the dissatisfaction of complainants with a decision not to launch a pretrial

investigation, the thoroughness of pretrial investigations or their promptness. It was also common for people who had had action taken against them by the police to regard such action as unjustifiable.

During the year under review, 19 complaints were resolved regarding the purview of the **Ministry of Education and Culture**. In nine cases the matter required measures by the Chancellor of Justice. The most significant of these was a ruling regarding an erroneous appointment procedure (OKV/513/1/2006), which highlighted the importance of a sound legislative basis for an official appointment procedure is for the implementation of basic and human rights. Complaints which did not require any action from the Chancellor of Justice involved the disqualification of educational administrative bodies or officials, amongst other things. Measures were typically not required when the resolution of a case fell within the authority's discretion. This was the case, for example, in ruling OKV/1641/1/2008 regarding the practice of the Matriculation Examination Board in publishing the names of recent graduates. The ruling pointed out, however, the importance of equal treatment of students who had graduated at different times of the year.

Complaints resolved within the purview of the **Ministry of Social Affairs and Health** included cases regarding the Ministry and, most commonly, social insurance and the Social Insurance Institute of Finland (KELA). One key issue in this administrative sector, again this year, was the performance of the Social Security Appeal Board. The Board's responsibility is to process complaints on decisions about basic social security, allowances and benefits, for example, under the Pensions Act, Disability Support Act and Sickness Insurance Act. Due to the nature of the cases dealt with by the Board, it is particularly important that complaints can be resolved properly and promptly. The Deputy Chancellor of Justice has been following the Social Security Appeal Board's performance since 2008, and he has reprimanded the Ministry of Social Affairs and Health for delay in remedying the situation. In 2008, the average processing time for complaints to the Social Security Appeal Board was 16 months and 10 days. In 2007, processing of complaints took an average of 17 months. During the year under review, the average processing time was 15 months and 10 days. During the year under review, the Deputy Chancellor of Justice received two reports from the Ministry of Social Affairs and Health on how it proposes to clear the backlog and reduce processing times. At the end of 2010, the case was still open at the Office of the Chancellor of Justice.

Within the purview of the **Ministry of the Environment**, several complaints were resolved relating to the "decentralised area waste water regulation" (Government Decree 542/2003 on treating domestic waste water in areas outside municipal sewerage facilities) and the proposal to amend sections 18 and 103 of the Environmental Protection Act. The complaints included allegations that the proposal's grounds for exempting residents from waste water treatment requirements (e.g. on the basis of age) were contrary to the constitutional requirement of non-discrimination. Rulings on the complaints were not able to include comments on the content of the Bill, which was still under discussion in Parliament. During the year under review, rulings were given on the alleged disqualification of the Minister of the Environment and certain environmental administration civil servants. However, for a variety of reasons these did not require any further measures by the Chancellor of Justice.

Issues regarding **other ministries** are discussed below in their designated chapters. The Office of the Chancellor of Justice conducted 30 inspections and other visits.

Purview of the Prime Minister's Office

Rulings

Election funding by state-owned companies

Following the publication of certain articles about election funding provided by state-owned companies, the Chancellor of Justice asked the National Audit Office of Finland to investigate and give its opinion on the matter. The National Audit Office carried out an audit on "election and party funding provided by state-controlled companies and state enterprises between 2006 and 2009, and state ownership steering", and issued a statement to the Chancellor of Justice.

Based on the National Audit Office's audit report and statement, as well as taking into account additional investigations and provisions, the Chancellor of Justice found that none of the ministries nor the Department of State Ownership Steering of the Prime Minister's Office had demonstrated such unlawfulness that would require measures from the Chancellor of Justice (OKV/1043/1/2009).

Purview of the Ministry for Foreign Affairs

Rulings

Ministry

Local pay increase at a diplomatic mission abroad

The Ministry of Foreign Affairs had issued a decree on a local pay increase at a diplomatic mission abroad, which was based on an enabling clause in the Act on Local Increases in Compensation Paid by Diplomatic Missions. Under the decree, special advisers in temporary posts had been put into a separate group, which led to significantly lower pay increases than for those in permanent posts.

The Chancellor of Justice said that section 4 of the Act on Local Increases in Compensation Paid by Diplomatic Missions permitted pay increases to vary according to the position. Therefore, it could not be seen as direct discrimination. The fact that the local increases for those in temporary posts were lower than the increases received by those in permanent posts, raised questions about non-discrimination and the significance of the term of the contract in relation to the amount of pay increase.

The Chancellor of Justice said that the Ministry of Foreign Affairs had not presented any legally sustainable argument against the possibility of indirect discrimination. The Ministry had also not presented any criteria related to job content and complexity.

The Chancellor of Justice pointed out to the Ministry of Foreign Affairs that the discretion of the Ministry when issuing adecree is restricted by provisions on equal and non-discriminatory treatment under the Constitution and the Act on Civil Servants, which impose restrictions on the content of decrees (OKV/1709/1/2008).

Inspections carried out in the purview

St. Petersburg Consulate General office in Petrozavodsk.

Purview of the Ministry of Justice

Rulings

Courts

A complaint to the Supreme Court on the basis of an error of judgement

The Supreme Court had sentenced the complainant for bribery without holding a hearing, even though the Court of Appeal, which had dealt with the case in the first instance, had dismissed the charges against the defendant. The European Court of Human Rights had judged that the Supreme Court proceedings in this case had breached the European Convention on Human Rights Article 6, Paragraph 1. According to the European Court of Human Rights, the Supreme Court could not have resolved the matter appropriately without holding a hearing to assess the defendant's report, when it was judging, amongst other things, the defendant's intent, which was not included in the original decision by the Court of Appeal, which had heard the defendant in person. The complainant asked the Chancellor of Justice to investigate whether the proceedings in the Supreme Court had contained such a processing error that would give grounds for the Chancellor of Justice to take steps to overturn a legally final judgement on the grounds of grave procedural error.

Under chapter 31, section 1(4) of the Code on Judicial Procedure, a legally valid judgement may be overturned by complaint on the basis of a grave procedural error, if the procedural error is found or can be presumed to have substantially affected the outcome of the case. The Chancellor of Justice said that, he had no grounds to assess the Supreme Court's procedure differently than the European Court of Human Rights. A procedural error, referred to in the above provision, had occurred in this case.

The European Court of Human Rights ruling expressly stated that the Supreme Court had not been competent to properly resolve the case on the complainant's guilt without holding a hearing. Supreme Court ruling KKO 2009:84 used the opinion of the European Court of Human Rights as its starting point for the assessment as to whether there was a need to overturn the judgement based on national regulations. The Chancellor of Justice considered that due to the nature of the procedural error, it could be held to have substantially affected the outcome of the case, as prescribed in the above-mentioned provision of law. The Chancellor of Justice referred to Supreme Court rulings KKO 2007:37 and 2009:84, as well as to rulings KKO 1999:94 and 1995:95, in which the Supreme Court had stated that for the sake of public trust in the administration of law it was important to avoid an overly narrow interpretation of the provision on the effects of judicial errors in the outcome of a case.

The Chancellor of Justice asked the Supreme Court to overturn the judgment in the case, because the European Court of Human Rights had ruled it had breached the European Convention on Human Rights Article 6, paragraph 1, and it was reasonable to assume that the procedural error had had a substantial effect on the outcome of the case (OKV/335/1/2010).

Review of penal judgements

The Legal Register Centre of the Ministry of Justice, in line with instructions issued by the Chancellor of Justice, forwards for examination a proportion of the notifications of sentences lodged with it by the courts. A notification of sentence contains the same information as the operative part of a penal decision and allows the examination of individual judgments for any formal errors and certain systemic errors. The review is based on random sampling, and it is thus impossible to detect every error made by the courts, but the system is designed effectively to weed out any recurring and common errors.

Errors detected may lead to a reprimand, position statement or an order to bring charges against an official.

Bringing charges against an official may be considered when an error constitutes a judicial offence in office, such as described in Section 40(10) of the Criminal Code. An error noted during penal judgment review last led to charges against an official in 2005. A reprimand may be issued if the nature of the offence does not warrant charges. A caution may also be issued for unlawful conduct that does not constitute an offence. Less serious errors result in a position statement, which is also the most common consequence of the errors noted in the review of penal judgments.

In addition to the above consequences, errors may in some cases give rise to a request to the Supreme Court that the judgement be reversed. A motion of reversal is usually made in favour of the defendant when the defendant is deemed to have suffered inconvenience or damage because of the error.

In 2010, a decision was issued on a total of 105 cases arising from the review of penal judgments. Three of the cases had been filed in 2009 and the rest in 2010. Two cases resulted in a reprimand and 38 cases resulted in the issue of a position or other statement or instruction. In the remaining cases investigated, the documents obtained on the matter or the account of the presiding judge showed either that no error had taken place, or that the error had been rectified at the judge's or court's initiative, or that the error was to be considered so minor as not to give rise to action.

Action taken due to errors observed				
CAUTION				
2006	2007	2008	2009	2010
7	**3**	**4**	**8**	**2**
POSITION OR INSTRUCTION				
2006	2007	2008	2009	2010
54	**34**	**27**	**17**	**32**

Prosecutors

Service of notice of dropping charges

A prosecutor had decided to drop charges and had served a notice on the party against whom the charges had been dropped, the complainant and the police, but not on the party who had requested the investigation.

The Deputy Chancellor of Justice pointed out to the District Prosecutor that a notice to drop charges must also be served on the party who had requested the investigation (OKV/589/1/2008).

Debt recovery

Notice to co-owners about debt recovery on jointly-owned property

Under chapter 4, section 71(1) of the Enforcement Code, jointly-owned property should be sold as a whole if a right of lien over the entire property has been granted as security for the applicant's receivables. A notice of the recovery procedure must be sent out to all other joint owners. A district bailiff had not notified the joint owners of a property that the property was about to be subject to a debt recovery procedure .

The substitute for the Deputy Chancellor of Justice highlighted for future reference the provisions of the Enforcement Code on joint ownership and the associated duty to inform joint owners (OKV/592/1/2008).

The Data Protection Ombudsman

Prompt processing of a request

The Office of the Data Protection Ombudsman had taken nearly three and a half years to process a complainant's request to correct certain data.

In its report, the Office of the Data Protection Ombudsman presented some credible reasons for the delay in processing the complainant's request, such as a lack of staff and staff turnover.

The substitute for the Deputy Chancellor of Justice stated in his ruling, however, that the processing and delays in a specialised authority's service must be assessed from the point of view of the party who requests the services and the enforcement of their legal rights. The processing time for the complainant's request had been unreasonably long and therefore the matter had not been dealt with without undue delay as required in the Constitution and provisions of the Administrative Procedure Act (OKV/327/1/2009).

Inspections carried out in the purview

The Legal Aid Office of Rovaniemi,

The Administrative Court of Rovaniemi,

The Regional Prosecutor's Office of Eastern Uusimaa,

The Regional Prosecutor's Office of Ostrobothnia,

The Court of Appeal of Vaasa,

The Supreme Court,

The Regional Prosecutor's Office of South-West Finland,

The Court of Appeal of Kouvola,

The Court of Appeal of Eastern Finland,

The Administrative Court of Kuopio.

Purview of the Ministry of the Interior

Statements and reports

Amendment to the Aliens Act

The Ministry of the Interior asked the Chancellor of Justice for a statement on a draft government proposal for an amendment to the Aliens Act, the Act on Aliens' Registration and the Act on Found Property to allow the introduction of a dedicated residence permit card, which would contain the biometric identifiers of facial image and two fingerprints. The proposal also included provisions for the storage of the fingerprints in a national fingerprint database.

The Chancellor of Justice said in his statement that since the Parliament's preparation work and decision-making are based on Government Bills presented to it, Bills must be properly drafted to assist the Parliament in carrying out its legislative role. To allow public debate on the issue the proposal should contain a sufficiently comprehensive comparison of the pros and cons of the selected regulatory option and other alternatives.

The EU residence permit regulation or its proposed amendment do not require fingerprints to be retained in a database. According to the draft Bill, the benefits and potential drawbacks of a fingerprint database were considered for the necessity as well as relevance of such database. The draft shows that an option not to save fingerprints in a national database was considered. The final decision on the proposal to save fingerprints in a database was made after a legislative amendment regarding passports, aliens' passports and refugee travel documents was adopted in June 2009. The draft referred to in this text emphasised the arguments in favour of the fingerprint database. The proposal, however, showed that Germany and Italy had no plans to save fingerprints in a database, and that Sweden had already decided not to save fingerprints in a database. The reasons which led to these decisions were not explained in the proposal (OKV/11/20/2010).

Rulings

The police

Search for an individual

The Police had conducted a search in an apartment for a child taken into care. The decision to carry out the search had been taken by the police sergeant who had led the search. According to the police sergeant's supervisor, a chief inspector, the search had been conducted under the Coercive Measures Act. The chief inspector stated that under the Coercive Measures Act, the police sergeant had the authority to decide on the search, because time was of the essence.

The Deputy Chancellor of Justice stated that the police had an incorrect understanding of the legal basis for the action. The Coercive Measures Act was not applicable to this case because it was not about the investigation of a suspected crime. The case involved the search for an individual, as described in the Police Act, and by law only a commanding police officer may take such a decision. The police sergeant who made the decision to search had thus exceeded their professional authority. In addition, no written record of the search had been made.

The Deputy Chancellor of Justice served a notice on the police sergeant. He also urged the chief inspector to follow the requirements of the Coercive Measures Act and the Police Act concerning the search for an individual, and the Police Department to comply with the duty to record a search under the Police Act (OKV/1268/1/2008).

Rescue services

Risk assessment made by an Emergency Response Centre duty officer

A man who had been assaulted had been lifted out of a car and left in a courtyard in front of a block of flats. A resident of the building, who had witnessed the events from their balcony, had contacted the emergency services. An ERC duty officer had concluded that the man was probably unconscious and intoxicated and passed the case to a police patrol labelled as "intoxicated person". The duty officer had not passed to the police any of the details of the car that the eye-witness had given. The assaulted man later died in hospital without regaining consciousness.

The ERC Administration's Emergency Response Unit stated that the duty officer should have been more determined to find out about the possible need for first aid and seek to mitigate any risk to health. In addition, the duty officer should have passed to the police patrol all the information the eye-witness had given concerning the car and persons linked to the event. According to the ERC statement, the overall handling of the emergency call had included obvious negligence and errors of procedure.

The Chancellor of Justice noted in his ruling that the assessment of the duty officer's conduct in this case chiefly entailed an assessment of professional competence better suited to ERC superiors

than supervisors of legality. The Chancellor of Justice had no means to assess the ERC duty officer's conduct, unlike the ERC Administration's Emergency Unit.

According to the Chancellor of Justice it was evident that the prioritisation of emergency calls was necessary for the most effective targeting of resources. An assessment of the urgency of help required is made by an emergency response unit, usually relying only on information received by telephone. The task is a demanding one, and errors of judgement in prioritising calls may not be completely unavoidable. The Chancellor of Justice reminded the ERC, however, of his earlier opinion that from the legal point of view, labelling someone as "intoxicated" or suffering from "suspected intoxication" leaves a lot of room for criticism when used to assess the need for an emergency ambulance or first aid. Even if the ERC duty officer had been right to assume that the person was intoxicated, the person may nevertheless have been in urgent need of care due to a possible sudden illness, or as in this case, violence against them.

The Chancellor of Justice drew the duty officer's attention to the points raised in his ruling, and also sent the ruling to the Emergency Response Centre Administration for information (OKV/1002/1/2009).

Finnish Immigration Service

The form of a residence permit decision and appeal guidance

The Finnish Immigration Service had adopted a paperless decision-making practice, according to which residence permits issued abroad (issued by Finnish diplomatic missions abroad, for example) did not include a written decision, but only a sticky label indicating a residence permit had been issued for a travel document (passport). In addition, there was a varying practice of issuing a "decision grounds print-out", which stated that the Immigration Service would on request provide a separate written decision with guidance on appeals. The sticky label itself did not contain any appeal guidance or any information on whether it was possible to obtain a separate decision. Appeal guidance included in the "decision grounds print-out" were incomplete, for example, regarding the appeal period and how it was calculated.

According to the Immigration Service, the sticky label constituted an administrative decision as prescribed in section 43 of the Administrative Procedure Act, and when an applicant had been issued a permit that they had applied for, they did not need any further legal protection. The Ministry of the Interior referred to section 20 of the Passport Act (671/2006), which stipulates that no separate administrative decision was required when a passport was issued in accordance with the application.

In his ruling, the Deputy Chancellor of Justice stated that the Immigration Service was governed by the Administrative Procedure Act, of which sections 43, 44 and 45 prescribe certain criteria for the form, content and reasoning for administrative decisions. According to the strict wording of section 47 of the Act, positive administrative decisions should also be accompanied by appeal guidance. The fundamental purpose of these provisions was to provide sufficient opportunity for appeal, and thus secure the principles of due process and good governance, as prescribed in section 21 of the Constitution.

Section 2(3) of the Constitution prescribes that the exercise of public powers should be based on statute. The Aliens Act (301/2004) is applicable to residence permit decisions, but unlike the Passport Act, it does not contain a special provision on the possibility of not issuing written decisions. A sticky label issued by the Immigration Service, either on its own or together with a "decision grounds print-out", does not constitute an administrative decision required by the Constitution and the Administrative Procedure Act. The Immigration Service had thus adopted practices that were not in accordance with the laws governing its operations.

The Deputy Chancellor of Justice sent his opinion to the Immigration Service and the Ministry of the Interior (OKV/533/1/2008).

Inspections carried out in the purview

The Ministry of the Interior,

The Police Department of Eastern Uusimaa,

The Police Department of Northern Savo.

Purview of the Ministry of Defence

Statement

Supervision of legality in the purview of the Ministry of Defence

The Ministry of Defence had set up a working group to improve the supervision of legality in its field. The Chancellor of Justice issued a statement on the working group's draft report and made a number of general observations, drawing particular attention to the protection of basic rights and liberties in the operations of the defence forces. While military activities must be run efficiently, in situations of conflict between efficiency requirements and basic right interests, excesses must be prevented and improper conduct disclosed. In a closed community, the attitude, ability and example set by immediate and other superiors in intervening in individual cases when things go wrong, is of particular importance (OKV/55/20/2009).

Purview of the Ministry of Finance

Rulings

Customs

Setting a reply deadline in a vehicle tax issue

The complainant criticised Customs for allowing them too short a period to respond in a vehicle tax case. The Administrative Procedure Act and Vehicle Tax Act do not stipulate the length of the appeal period to be allowed for a party to respond. According to the Administrative Procedure Act, the decision on the length of the appeal period is at the discretion of the authority. The Deputy Chancellor of Justice found that Customs had acted within its authority and lawfully when it had set an appeal period of 14 days, taking into account that it was possible for this time to be extended if necessary. He felt, however, that in this particular case the appeal period was in reality too short, taking into account that the period spanned the Christmas holidays.

In another case, the complainant criticised Customs for giving them an opportunity to reply in a vehicle car tax case, but that the draft decision attached to the consultation letter had included the statement "the taxpayer has provided a reply to the draft decision". When Customs investigated the case it found that the complainant had two pending vehicle tax appeals at the same customs district office. The reply the complainant had given in the first appeal had been mistakenly attached to the complainant's second vehicle tax file. After the error was noticed, Customs had given the complainant another opportunity to reply, and a new adjustment decision, including grounds and appeal guidance, had been made.

The substitute for the Deputy Chancellor of Justice urged Customs to comply with the consultation procedure in future, and to pay attention to the careful handling of documents so that a party's legal protection could be guaranteed (OKV/1737/1/2008).

Inspections carried out in the purview

The Local Register Unit of Lapland,

The Local Tax Office of Kanta-Häme,

Tax Administration,

Tax Recipients´ Legal Services Unit,

Uusimaa Regional Tax Office Board of Adjustment.

Purview of the Ministry of Education

Rulings

Education administration

Deleting an entry from a university student register

Pursuant to their right to pursue a Master of Arts degree, a university student had enrolled in May for the following academic year 2008-2009. The student had completed their Master of Arts degree in June 2008. As a result, the student's right to pursue a degree, and thus also their right to study at the university, was considered terminated on 31 July 2008. Because of this, the student's previous enrolment was removed from the university student register.

In his ruling, the Deputy Chancellor of Justice noted that according to the decision issued by the rector of the University on 17 January 2008, and other documents, all undergraduate students were required to register their attendance or non-attendance for each academic year. The registration period was from 1 May until 31 August. To be able to undertake studies, students must have had their attendance registered. The rector's decision included a paragraph on how completing a degree would affect the annual attendance registration. The decision detailed only the termination of the right to pursue a degree in the case of students who had completed their degree during the autumn term. The said paragraph did not mention the termination of the right to pursue a degree in the case of students who had completed their degree so late in the spring term that they had already enrolled for the next academic year. There were no rules regarding the removal of an attendance registration from the student register in such a case.

The rector made another decision on the same issue on 23 April 2010 including a rule on cancelling an enrolment, should the student's position change so that they no longer had the right to pursue a degree during that academic year. Even after this, the decision did not indicate when the right to pursue a degree would be terminated for those who completed their degree outside the autumn term.

As the student's complaint was being investigated by the Office of the Chancellor of Justice, the university failed to provide a report within the requested time period. The report was not provided despite a written reminder about the urgent nature of the issue. The report only arrived after the Deputy Chancellor of Justice's written request.

The Deputy Chancellor of Justice pointed out for future reference that the university's procedure concerning the student had not been based on any rules or regulations, and that it had reportedly been the practice of the University. In addition, the Deputy Chancellor of Justice called to the university's attention, first, the importance of clarity, as part of good governance and as prescribed in section 21 of the Constitution in drawing up rules and regulations applying to students, and secondly, the need to comply with set time periods and reminders of urgent nature when providing reports to the Chancellor of Justice. (OKV/1081/1/2008).

Purview of the Ministry of Agriculture and Forestry

Rulings

Agriculture and Forestry

Processing and replying to requests

Over the years, Metsähallitus had processed and resolved several off-road traffic permit applications by the complainant. Permit licensing policy was changed in 2003, after which the complainant had sent several new applications and requests to Metsähallitus. Metsähallitus had not replied to all of the correspondence, even when the letters contained permit requests and replies had clearly been expected. In some cases, the case-handler had been in telephone contact with the complainant following receipt of a letter by Metsähallitus. The Deputy Chancellor of Justice stated that an authority is obliged to resolve all permit applications received. It had consistently been considered that good governance entailed the provision of appropriate replies, as required by the nature of the matter, to letters that had been addressed to a competent authority and that had been adequately identified. The Deputy Chancellor of Justice urged Metsähallitus to observe the provisions of the Administrative Procedure Act on the initiation, handling and resolution of a matter, and on the authorities' duty to give advice (OKV/202/1/2009).

Inspections carried out in the purview

Ministry of Agriculture and Forestry,

Agency for Rural Affairs.

Purview of the Ministry of Transport and Communications

Rulings

Ministry

Acknowledgement of receipt of an electronic document

The complainant had sent several emails to the Ministry of Agriculture and Forestry's official email address, but according to the complaint they had not received an acknowledgement of the receipt of an electronic document to some of the emails, and in the case of some emails this had only been received after the complainant had specifically asked for it. The Chancellor stated that under section 12(1) of the Act on Electronic Services and Communication in the Public Sector (13/2003) the authority should without delay notify the sender by an electronic message of the receipt of the message. According to the Ministry, the IT system in use at the Ministry only sent an automatic acknowledgement of receipt of the first email received from a sender at the Ministry's official email address, although the intention had been that all emails received at the Ministry's official email address would be automatically acknowledged.

Insofar as the Ministry's IT system had failed to acknowledge some of the complainant's emails, the Chancellor of Justice held that the Ministry's procedure had not complied with the Act on Electronic Services and Communication in the Public Sector. In addition, the acknowledgement had been sent a long time after the receipt of some of the emails, and in this respect, the Chancellor said that the Ministry's acknowledgement for one email in particular at least three weeks after it was received did not meet the requirement of "without delay" under section 12(1) of the above-mentioned Act. The Ministry had not complied with the Act on Electronic Services and Communication in the Public Sector by the delivery of the said acknowledgement.

Since the Ministry had, during the investigation into the complaint, changed the former IT system so that an acknowledgement would be sent out to every electronic document received by the Ministry's official email address, the Chancellor of Justice considered it sufficient to call the Ministry's attention to the duty to notify, as prescribed in section 12(1) of the Act on Electronic Services and Communication in the Public Sector (OKV/209/1/2009).

Inspections carried out in the purview

Finavia Oyj.

Purview of the Ministry of Employment and the Economy

Rulings

Centre for Economic Development, Transport and the Environment

Cancellation of admission to labour market training

An Employment Office had sent a letter to the complainant, informing them that they had been accepted for adult employment training. However, based on information received from the training instructor and after discussing the matter with the official responsible for the training, an employment counsellor had sent the complainant another letter cancelling the acceptance for employment training, without the complainant having been given the opportunity to be heard on the matter. According to the Employment Office's investigation, the unit's officials had erred in cancelling the approval to attend the training. The Deputy Chancellor of Justice stated that according to the Employment Office's report, the case had been discussed with the officials concerned and the appropriate procedures had been highlighted. Therefore the complaint did not lead to any measures except that the ruling was sent as information to the Employment and Economic Development Office and the district office in question (OKV/1424/1/2008).

Inspections carried out in the purview

Ministry of Employment and the Economy,

Centre for Economic Development, Transport and the Environment of North Karelia,

Employment and Economic Development Office of Eastern Uusimaa.

Purview of the Ministry of Social Affairs and Health

Statement

Law on biobanking

According to a statement request received by the Office of the Chancellor of Justice, the aim of the proposal for a law on biobanking prepared by the Ministry of Social Affairs and Health was to promote the scientific use of human samples and strengthen research activities, in a way that at the same time protected the individual's rights to privacy and autonomy and was able to adequately manage any risks related to biobanking. In addition, the proposal included the establishment of a nationwide biobanking database, which would allows citizens to receive information about samples retained for biobanking research.

The Chancellor of Justice stated that several provisions of the proposal came very close to impinging on the constitutional basic rights and liberties of personal integrity and privacy. As a supervisor of basic and human rights, the Chancellor of Justice stressed the importance of guaranteeing the sample donor's personal integrity and protection of private life. The proposal had been considered in terms of basic rights provisions and individual provisions of the proposal had been considered in relation to basic rights provisions. Because this was a new piece of legislation involving basic rights and liberties, the Chancellor of Justice asked the Ministry to consider whether the reasoning of the proposal should mention the obtaining of an opinion from the Constitutional Law Committee (OKV/12/20/2010).

Rulings

Regional State Administrative Agencies

Care in the use of language and appropriate discharge of official duties

A complainant had made two separate complaints to the regional state administrative agency about two separate events in the provision of care. As a result of the complaints, a statement was requested from the supervisor of two doctors who had been treating the complainant. One of the supervisor's statements claimed that the patient had been found to be drunk at the time of treatment. The regional state administrative agency had issued two separate decisions on the same day. The supervisor's

statement on the patient's state of drunkenness had been edited in the wrong context and in such a way that it also referred to the other care event, which had nothing to do with the statement on drunkenness. The decision-maker and the reporting official admitted that an error had occurred while editing the statements. When the matter came to light, it was rectified by making a new decision in accordance with section 50 of the Administrative Procedure Act, and the revised decision was sent to the complainant and the supervisor, who had issued the original statements.

Under the State Civil Service Act (750/1994), section 14(1), civil servants should carry out their official duties appropriately and without errors. The Administrative Procedure Act (434/2003) and the underlying provisions of good governance in section 21 of the Constitution also promote a general duty of care in discharging official duties. According to the express provision in section 9 of the Administrative Procedure Act, an authority and its official representatives shall use appropriate language, which includes, among other things, carefully considering whether their linguistic presentation corresponds to the intended meaning. When an error had occurred at the decision-making stage, the complainant's case had not been processed appropriately and correctly by the regional state administrative agency.

The Deputy Chancellor of Justice called attention of the officials concerned to the appropriate discharge of official duties (OKV/846/1/2008).

Purview of the Ministry of the Environment

Ruling

Finnish Environment Institute

Processing of a permit application

The complainant had submitted a permit application to the Lapland Regional Environment Centre and Metsähallitus for the pumping of water outside the terms of [their current] mining permit. On 6 September 2007, Metsähallitus had transferred the application to be decided at the Ministry of the Environment, where it was still pending.

The procedure for the processing of the application by the environment administration did not appear to the Chancellor of Justice as clear and well considered. The permit applicant had not at any stage of the process been told what additional information was needed to obtain a permit. No time limit was set for supplying the additional information, as required by the Administrative Procedure Act. In addition, the Chancellor of Justice thought that the processing time for the application of two and a half years had been unreasonably long.

The Chancellor of Justice urged the Ministry of the Environment to follow the provisions of the Administrative Procedure Act and the Constitution on the appropriate and timely processing of matters (OKV/481/1/2009).

Inspections carried out in the purview

Centre for Economic Development, Transport and the Environment of Häme,

Centre for Economic Development, Transport and the Environment of Uusimaa,

Regional State Administrative Agency of Southern Finland.

7

SUPERVISION OF LEGALITY IN MUNICIPAL ADMINISTRATION AND OTHER SELF-GOVERNMENT

General

Supervision of legality in municipal administration, church administration and the autonomous government of Åland are all part of the Chancellor of Justice's remit. The greatest number of cases resolved during the year under review related to municipal administration. The Chancellor of Justice received numerous complaints particularly regarding social security, child protection and general municipal administration, as well as treatment and examinations undertaken in municipal hospitals and health care centres. Several complaints questioned whether the conduct of an office-holder or another official had followed the principles of good governance.

Social security complaints dealt with the length of processing times and treatment of clients when they had been asked for further clarification, for example, as well as the right to receive social security. The right to receive social security and the amount of social security do not typically come under the jurisdiction of the Chancellor of Justice, but fall under the jurisdiction of the relevant authority. Replies to these complaints advised the complainants to appeal against the decisions issued on social security. Complaints regarding non-compliance with the legal requirements for the processing of social security applications often led to measures, and in addition, the clarity of the social security application form raised some concerns.

The Chancellor of Justice's opinions on child welfare matters involved the conduct of social workers and procedures in child welfare institutions.

Many of the Chancellor of Justice's rulings that led to measures cited the constitutional right to good governance and fair trial. The rulings dealt with topics including the right to obtain information and the processing of a document request under the Act on the Openness of Government Activities; replying to enquiries; the duty to give advice; and the provision of appeal guidance. The implementation of good governance and fair trial required particular attention within the environmental administration.

During the year under review, the Chancellor of Justice ruled on a fire safety issue in supported housing, and assessed municipal labour and collective bargaining agreements under the terms of the Constitution and the Non-Discrimination Act.

Inspections were conducted at child protection services provided by the city of Rovaniemi's social protection board, and at the city of Kuopio's welfare services for substance abusers.

Municipal administration

Education administration

The lawfulness of school rules

Rules of a school banned photography, video and sound recording on school premises. According to a report obtained, the ban applied to the school's students during school hours.

The Deputy Chancellor of Justice advised the municipality for future reference that photography, video and sound recording are an exercise of the freedom of speech as prescribed in section 12(1) of the Constitution. The ban was part of the school rules, which had been issued in accordance with section 29 of the Basic Education Act. The provisions of the above section regarding the purpose and scope of school rules were not, however, precise enough to meet the general requirements for restriction of basic rights, which would have allowed the drawing up of rules to limit freedom of speech. Neither did the ban define the extent to which it was necessary for the safeguarding of other basic rights. Therefore the ban was against section 12(1) of the Constitution (OKV/166/1/2008).

Inspections carried out in the purview

Child welfare services of the City of Rovaniemi's social protection board,

City of Kuopio's welfare services for substance abusers.

Church administration

Processing of a complaint in the Cathedral Chapter

A party who had made a complaint about a vicar's conduct to the Cathedral Chapter enquired as to whether anyone had been heard concerning the case or if there was an intention to hear anyone. Without explicitly answering the question, the legal assessor of the Cathedral Chapter advised the complainant that under chapter 24, section 1(6) of the Act on the Openness of Government Activities, the case files were to be kept confidential prior to reaching a decision, and as the complainant was not a party to the proceedings, they were not entitled to obtain information on relevant documents while the proceedings were still ongoing. In essence, the assessor politely refused to provide the requested information.

As the Cathedral Chapter had requested and received a report from the vicar, the complainant's enquiry concerned the receipt of information about a record which under section 6 of the

Act on Openness of Government Activities should have been entered in the Cathedral Chapter journal or another similar register.

The Deputy Chancellor of Justice stated that the legal assessor's conduct had been erroneous. First, the assessor had given an inadequate reason for the refusal to give information. It would have been advisable to inform the complainant whether the release of information from the case files in question would have hampered the processing of the matter, or if done without a pressing reason, whether it would have been likely to cause harm or suffering to the vicar. Secondly, he failed to comply with the procedure prescribed in section 14(3) of the Act on Openness of Government Activities. In addition to stating the reason for refusal, the assessor should have informed the complainant of the possibility of referring the request to the Cathedral Chapter; enquired whether the complainant wanted to transfer the request to an authority for a decision; and provided information on the processing fees.

The Deputy Chancellor of Justice also held that as the complainant was not a party or defendant in the proceedings, the Cathedral Chapter had not been obliged to offer him an opportunity to respond. However, as the documents revealed that the complainant's eldest son had been receiving tuition from the vicar, from a legal protection perspective, the Cathedral Chapter would not have been wrong to grant the complainant an opportunity to respond (OKV/295/1/2008).

Autonomous government of Åland

Provincial Government appointment procedure

Investigations into a complaint revealed that the provincial Government of Åland had appointed a university rector for Högskolan för Åland for the period between 1 January 2008 and 31 December 2010, without publicly declaring the post vacant.

Under section 6(1) in the Act on Civil Servants of the Province of Åland, a permanent official post should be declared vacant before an appointment, unless otherwise specified by law. When the Deputy Chancellor of Justice called for an annulment of the legally final decision, the Supreme Administrative Court found that a manifestly incorrect interpretation of law had resulted in negligence, and a procedural error had occurred during the appointment. Considering that the rector's post had been filled for the period ending 31 December 2010, the Supreme Administrative Court ruled that it was no longer necessary to annul the decision in the public interest.

As the provincial Government of Åland had failed to declare the post vacant, as required under section 6(1) of the Act on the Civil Servants of the Province of Åland, the Deputy Chancellor of Justice issued a written notice on the misconduct for future reference (OKV/277/1/2008).

8

Supervision of the Bar

Overview

Supervision of the Finnish Bar Association by the Chancellor of Justice is carried out as part of the overall supervision of legality, and the Association has the immediate responsibility for the supervision of its members. The division of supervision duties between the Bar Association and the Chancellor of Justice is intended to secure, on the one hand, the independence of those who provide advocacy services in defence of their clients' rights, and on the other hand, efficient supervision. Thus far, no other legal services providers, advocates or public legal aid counsels are covered by this supervision.

On 17 December 2010 the Government submitted to Parliament a Bill on licensed legal counsels and certain related Acts (HE 318/2010 vp). The Bill proposed the establishment of a new licensing system to cover all attorneys and legal counsels, other than lawyers and public legal counsels already covered, and thus bringing them under a system of professional ethics and control. A new Legal Counsel Board would be responsible for licensing. Licensed legal counsels would then be subject to the monitoring and control of the Chancellor of Justice and the general bar association, i.e., the Finnish Bar Association and its Disciplinary Board, and the new Legal Counsel Board. The independence and functional separation between the Finnish Bar Association and Legal Counsel Board would be strengthened.

As the freedom and autonomy of the Bar is an important element of Finnish law, members of the Bar must have the right to protect their clients' rights and interests free from outside influence and in compliance with the law and code of conduct of the Bar. Primary responsibility for supervising the activities of advocates therefore lies with the Disciplinary Board and the Board of the Association itself.

Supervision of advocates and public legal counsels, as well as the supervision of the Bar Association, discussed below, form a part of the general supervision of legality performed by the Chancellor of Justice. Any citizen who considers that an advocate has neglected their duties or has not followed the professional code of conduct of the Bar may turn to the Finnish Bar Association or the Chancellor of Justice. The Chancellor of Justice also has the right of appeal in respect of any decisions taken by the Board of the Association or its Disciplinary Board.

Membership of the Finnish Bar Association

According to Section 1 of the Advocates Act (496/1958), an "advocate" is a person who is registered in the Roll of Advocates as a member of the Finnish Bar Association. A lawyer with practical experience and expertise in addition to the requisite legal training must be accepted as a member of the Bar Association. In addition, the rules of the Bar Association require that the applicant must pass an advocate's examination.

Duties of, and the Code of Conduct for, lawyers

Under Section 5 of the Advocates Act, an advocate should honestly and conscientiously fulfil the tasks entrusted to them and they should, at all times, observe the rules of proper professional conduct for advocates. This definition of advocates' overall duties ensures the interests of both the public and clients. Safeguarding the public interest assumes, for example, that an advocate should, in the performance of their duties, support the due administration of justice as far as possible.

The principles of good professional conduct have been defined in greater detail in the Bar Association's Code of Conduct for Lawyers. The current code, adopted by the Delegation of the Finnish Bar Association in January 2009, contains provisions concerning an advocate's work, law firms and their organisation, acceptance and rejection of and withdrawal from an assignment as counsel, issues concerning the relationship between advocate and client, and the advocate's relationship with the opposite side, the courts and other authorities.

Supervision matters

System of supervision

Under Section 6 of the Advocates Act, the Board of the Bar Association shall supervise advocates in fulfilment of their obligations when appearing in a court of law or before another authority as well as in their other activities.

Under Section 7(1) of the Advocates Act (697/2004), an independent, nine-member Disciplinary Board of the Bar Association considers and decides on supervisory matters. The Chair and five members are advocates, elected by the Delegation of the Bar Association. The Government appoints the three members who are non-members of the Bar on the recommendation of the Ministry of Justice following receipt of a favourable opinion from the Bar Association concerning the qualifications of the candidates. Members of the Disciplinary Board act in a quasi-judicial capacity.

A supervisory matter arises when a written complaint is lodged against an advocate by a client or the opposite side, when raised in the course of supervision by the Association, or by a notice issued by the Chancellor of Justice or a court of law. The Disciplinary Board considers and decides matters usually in three divisions, and each includes at least one non-member of the Bar. Matters so assigned by the Chair of the Disciplinary Board or reassigned by the divisions shall be dealt with in plenary session. The plenary session considers, for example, exceptionally serious, difficult or significant matters and complaints raising issues that are of importance to all Disciplinary Board members. Decisions on disbarment and the imposition of a monetary penalty are always made in plenary session.

Written proceedings shall be employed in matters of supervision. The advocate shall be afforded an opportunity to be heard before the case is decided and the complainant shall be given an opportunity to comment on the response of the advocate. However, a decision on disbarment or the imposition of a monetary penalty may be made only if an oral hearing has been held. The Disciplinary Board or a division may also hold oral hearings under other circumstances. The advocate concerned and the complainant should be summoned to the oral hearing.

It is important that the disciplinary procedure meet the requirement that the advocate supplies the requisite information and accounts for his or her conduct openly and truthfully. The Disciplinary Board and a division should also ensure that the matter is investigated thoroughly in all other respects.

Resignation of an advocate from the Finnish Bar Association will not prevent disciplinary proceedings from being concluded. If it is found that an advocate has breached their duties, a statement will be issued on what disciplinary sanction is to be imposed on the advocate.

A public record shall be kept, and reports issued on the complaints dealt with by the Finnish Bar Association, containing information on the complainant or applicant, the advocate, the type of case and the result of the case.

Disciplinary sanctions

If it is revealed, during supervisory proceedings, that an advocate has breached their duties, the Disciplinary Board should impose a disciplinary sanction on the advocate; the disciplinary sanctions are disbarment from the Association, a monetary penalty, caution and reprimand. It is also possible for the Disciplinary Board to remind the advocate of appropriate conduct in cases in which the Board considers that no actual breach of duty has occurred, but that the advocate's conduct was inappropriate.

The monetary penalty shall be no less than 500 Euros and no more than 15,000 Euros; the amount of the penalty shall be based on the degree of misconduct, the experience of the advocate and the advocate's financial circumstances, so that the penalty is in due proportion to the misconduct.

If an advocate acts dishonestly or otherwise deliberately infringes the interests of another person while practising as an advocate, the advocate shall be disbarred. If there are mitigating circumstances, a monetary penalty or a caution may be imposed instead.

If an advocate otherwise acts in breach of proper professional conduct, a caution or a reprimand shall be imposed. If the advocate engages repeatedly in such conduct, or if there are aggravating circumstances, the advocate may be disbarred or a monetary penalty imposed.

If a client objects to an advocate's invoice, they apply to the Bar Association Disciplinary Board for a recommendation of a reasonable fee. Any fee disputes shall be considered in a Board division, which shall be chaired by a non-member of the Bar. A recommendation issued in a fee dispute is not enforceable, however, and it does not have the legal effect of a court decision. A client may take a fee dispute to a district court or the Consumer Disputes Board as a civil case. The Chancellor of Justice does not have the right to appeal against fee dispute decisions.

Notifications from public prosecutors

According to guidance issued by the Prosecutor General (VKS:2000:6), public prosecutors must notify the Chancellor of Justice of any charges being brought against an advocate in a court of law, which may have an effect on their capacity to serve as an advocate or reflect unfavourably on the legal profession. The notification is served by sending a copy of the charges brought against the advocate and a court decision or waiver of charges to the Office of the Chancellor of Justice.

In 2010, public prosecutors sent the Chancellor of Justice two notifications regarding charges against an advocate or waiver of charges.

Should the matter so require, notification by a public prosecutor shall also be sent to the Finnish Bar Association for it to begin its own disciplinary proceedings.

Supervision by the Chancellor of Justice

Applicable regulations and supervisory proceedings

The independent position of advocates is reflected on the Chancellor of Justice's work. The Chancellor of Justice supervises the discharge of advocates' responsibilities in their roles, but the Chancellor of Justice has no authority to intervene in their actual work or take any disciplinary measures against them.

Under Section 10(2) of the Advocates Act, the Chancellor of Justice has the right to appeal against decisions on disciplinary and membership matters as referred to in Sections 7 and 9. The Chancellor of Justice receives copies of Bar Association decisions on all supervisory issues. A decision shall be sent simultaneously to the complainant or person who originally raised the issue. Should that person consider that the supervisory issue has not been dealt with in an appropriate manner or if they are dissatisfied with the decision, they may refer it to the Chancellor of Justice who should consider their claim and may appeal against the decision. For purposes of supervision and consideration of appeal, the Office of the Chancellor of Justice may, if necessary, request relevant documents from the Disciplinary Board.

Advocates have the right to appeal against decisions on disciplinary sanctions against them. Most commonly, complaints are made against the most lenient sanction, i.e. reprimand. Because a complainant is not party to supervisory proceedings, they have no right to appeal against the final decision, but they must be heard at appeal. The Board of the Bar Association is still required to issue a statement on a complaint. The Court of Appeal of Helsinki must afford the Chancellor of Justice, the Bar Association and the complainant an opportunity be heard in a complaint case, and if necessary, also to present evidence or other clarifications.

Complaints regarding the conduct of advocates

In practice, the primary supervisory responsibility of the Finnish Bar Association is exercised through the transfer to it of complaints with probable cause against an advocate under section 6 of the Advocates Act. Some of the complaints the Chancellor of Justice receives have already been processed by the Supervisory Board. Under Section 7(c)(2) of the Advocates Act, however, a supervisory matter that has been decided by the Bar Association shall not be reopened on the basis of a new complaint, unless the complaint contains relevant new information (see. KKO:1997:158).

Based on the complaint letters the Chancellor of Justice receives, it is possible to determine what areas of advocacy the public typically perceives as problematic. First and foremost, the Chancellor of Justice receives complaints concerning the winding up and distribution of estates, particularly in cases in which there are several interested parties to the estate. Complaints concerning delays regarding the distribution of inheritances and partition are also common. These cases are often influenced by disagreements between interested parties regarding the management of an estate or realisation of assets. These issues recur year after year, as do complaints concerning the impartiality of advocates.

Complaints concerning the conduct of public legal aid counsels and advisors often flow from clients' disappointment with a court decision. This is common in civil cases. Complaints concerning the conduct of advocates during court proceedings often allege that the advocate did not present a vital piece of evidence or otherwise acted inefficiently. In addition, it may be alleged that the advocate representing the opposite side exerted undue pressure on or mislead the complainant, or did something else against professional ethics.

Commencing supervisory proceedings and appealing to a court of appeal

The Chancellor of Justice initiated supervisory proceedings by transferring complaints he had received to the Finnish Bar Association in a total of 10 cases.

Decision on a complaint

Processing time of a review case at the Finnish Bar Association

A complaint revealed that the Finnish Bar Association had taken nine years to review the activities of a lawyer between 2001-2010. In its reports, the Bar Association admitted that the review had indeed taken a long time. The reason for this, according to the Association, was that several criminal and civil cases linked to the review situation had been pending.

In assessing the processing time in the case, the Chancellor of Justice had to take into account, amongst other things, changes in disciplinary/control procedures, the role of the complainant in the process, and several pending criminal and civil cases linked to the review between the years 2005 and 2008. It was especially important to pay attention to the requirement for adequate investigation into the matter during the period between September 2008 and March 2009, and it was only natural that the lawyer was afforded the opportunity to address any new criticisms in the case. The Chancellor of Justice therefore believed that the Bar Association's conduct should not be criticised when it came to the handling of the case prior to March 2009, when the active investigation had been completed.

The Bar Association's decision in March 2009 to wait for the final appeal decision in a criminal case linked to the review could also not be considered directly unlawful in the sense that it did not unduly

delay the processing of the review. The Chancellor of Justice did consider, however, that it would have been advisable to have sought to have resolved the matter at the Bar Association immediately after the active investigation had been completed in March 2009. This view was supported by the underlying basic right to have one's case dealt with by an authority without undue delay, and in particular the fact that the case had already been pending at the Bar Association for a very long time, as well as other points against further prolongation of the proceedings as explained in the ruling.

The Chancellor of Justice informed the Bar Association of his opinions on the handling of the monitoring proceedings (OKV/99/1/1008).

9

Statistics

Caseload in 2010

Cases pending on 1 January 2010

filed in 2006	1
filed in 2007	11
filed in 2008	299
filed in 2009	812
Total	1 123

Cases filed in 2010

complaints	1 843
other supervisory matters [24]	788
administrative matters	74
Total	2 705

Matters resolved in full in 2010 2 663

Transferred to the next year

matters instigated in 2007	1
matters instigated in 2008	22
matters instigated in 2009	262
matters instigated in 2010	880
Total	1 165

[24] Including inspections and matters initiated at the Chancellor of Justice's own initiative, statements, judicial offences in office, supervision of advocates and matters on the basis of the review of penal judgments

Supervision of Government

Sessions

1) Governmental plenary session	72
2) Presidential session	44

Matters dealt with

1) Governmental plenary session	1 676
2) Presidential session	914

Minutes reviewed

1) Governmental plenary session	70
2) Presidential session	46

Requests for comments from the authorities

Filed

1) President of the Republic, Government and Ministries	40
2) other authorities	12
Total	52

Measures taken

1) written statement	45
2) other comment	1
3) other measure	2
4) rectification or adjustment while complaint was pending	1
5) no measures needed due to action taken at the initiative of the authority	6
6) beyond the competence of the Chancellor of Justice	1
Total	56

Complaints

Filed in 2010	1 843

Complaints related to the following authorities or subject matters

1) Government or Ministry	168
2) court of general jurisdiction, criminal case	79
3) court of general jurisdiction, other type of case	165
4) administrative court	69
5) special court	38
6) prosecution authority	71
7) police	296
8) enforcement authority	51
9) prison authority	8
10) other judicial authority	26
11) foreign service authority	5
12) provincial and other internal affairs authority	36
13) defence forces	6
14) tax authority	32
15) other authority in State finances	31
16) education authority	35
17) agriculture and forestry authority	35
18) transport and communication authority	26
19) trade and industry authority	30
20) social welfare	96
21) social insurance	80
22) occupational safety and other cases under the Ministry of Social Affairs and Health administrative sector	11
23) health care	115
24) labour authority	21
25) environmental authority	36
26) municipal authority	160
27) church authority	9
28) other authority or other person performing public duty	102
29) Member of the Bar, public legal aid attorney	117
30) civil law matter	62
31) miscellaneous	143
Total [25]	2 159

[25] Some complaints relate to more than one authority or matter.

Complaints resolved	1 853

Complaints related to the following authorities or subject matters

1)	Government or Ministry	169
2)	court of general jurisdiction, criminal case	91
3)	court of general jurisdiction, other type of case	166
4)	administrative court	73
5)	special court	49
6)	prosecution authority	82
7)	police	313
8)	enforcement authority	60
9)	prison authority	6
10)	other judicial authority	36
11)	foreign service authority	4
12)	provincial and other internal affairs authority	64
13)	defence forces	8
14)	tax authority	32
15)	other authority in State finances	32
16)	education authority	28
17)	agriculture and forestry authority	31
18)	transport and communication authority	23
19)	trade and industry authority	19
20)	social welfare	93
21)	social insurance	75
22)	occupational safety and other cases under the Ministry of Social Affairs and Health administrative sector	16
23)	health care	69
24)	labour authority	24
25)	environmental authority	21
26)	municipal authority	172
27)	church authority	6
28)	other authority or other person performing public duty	126
29)	Member of the Bar, public legal aid attorney	112
30)	civil law matter	74
31)	miscellaneous	143
Total [26]		2 217

[26] Some resolutions relate to more than one authority or matter.

Measures based on complaints

1)	reprimand	9
2)	position or instruction	150
3)	other comment	14
4)	other measure	9
5)	rectification or adjustment while complaint was pending	19
Total		201

Decisions on complaints where no fault in official conduct was found [27]

1)	no erroneous conduct was revealed	959
2)	outside the competence of the Chancellor of Justice	237
3)	pending before competent authority or appeals not exhausted	230
4)	transferred to the Parliamentary Ombudsman	61
5)	transferred to the Prosecutor-General	1
6)	transferred to the Finnish Bar Association	8
7)	transferred to the competent authority	4
8)	incomprehensible	171
9)	lapsed following withdrawal of complaint or other reason	322
10)	exceeded five-year time limit	40
Total		2 033

[27] In most of these cases, the complainant has been notified in writing.

Reviews of penal judgments and judicial offences in office by the judiciary

Review of penal judgments

Penal judgments received for review	6 368
Filed on the basis of review of penal judgment	108

Judges offences in office

Notices to the Chancellor of Justice

1) Court of Appeal	11
2) police	14
3) Office of the Prosecutor-General	2
4) local prosecution offices	5
Total	32

Measures taken

1) charges brought	1
2) reprimand	2
3) written statement	1
4) opinion or instruction	34
5) no measures needed due to action taken at the initiative of the authority	94
6) inadmissible because pending before competent authority	1
Total	133

Own initiatives and on-site inspections

own initiatives	19
on-site inspections	30
Total	49

Measures taken

1) opinion or instruction	11
2) other comment	4
3) other measure	2
4) no measures needed due to action taken at the initiative of the authority	5
5) inspection or tour of authority	30
6) transferred to the Prosecutor-General	1
Total	53

Supervision of the Bar

Filed

1)	supervision and fee disputes	526
2)	other supervision of the Bar	25
Total		551

Measures taken

1)	written statement	19
2)	no measures needed due to action taken at the initiative of the authority	515
3)	transferred to the Finnish Bar Association	1
Total		535

Measures in all groups

1)	charges brought	1
2)	reprimand	11
3)	position or instruction	195
4)	written statement	65
5)	other comment	19
6)	other measure	13
7)	rectification or adjustment while complaint was pending	20
Total		324

APPENDIX 1

The Constitution of Finland Sections 69, 108, 110-115, and 117

Chapter 5 – The President of the Republic and the Government

Section 69
The Chancellor of Justice of the Government
Attached to the Government, there is a Chancellor of Justice and a Deputy Chancellor of Justice, who are appointed by the President of the Republic, and who shall have outstanding knowledge of law. In addition, the President appoints a substitute for the Deputy Chancellor of Justice for a term of office not exceeding five years. When the Deputy Chancellor of Justice is prevented from performing his or her duties, the substitute shall take responsibility for them.

The provisions on the Chancellor of Justice apply, in so far as appropriate, to the Deputy Chancellor of Justice and the substitute.

Chapter 10 – Supervision of legality

Section 108
Duties of the Chancellor of Justice of the Government
The Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic. The Chancellor of Justice shall also ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor of Justice monitors the implementation of basic rights and liberties and human rights.

The Chancellor of Justice shall, upon request, provide the President, the Government and the Ministries with information and opinions on legal issues.

The Chancellor of Justice submits an annual report to the Parliament and the Government on his or her activities and observations on how the law has been obeyed.

Section 110

The right of the Chancellor of Justice and the Ombudsman to bring charges and the division of responsibilities between them

A decision to bring charges against a judge for unlawful conduct in office is made by the Chancellor of Justice or the Ombudsman. The Chancellor of Justice and the Ombudsman may prosecute or order that charges be brought also in other matters falling within the purview of their supervision of legality.

Provisions on the division of responsibilities between the Chancellor of Justice and the Ombudsman may be laid down by an Act, without, however, restricting the competence of either of them in the supervision of legality.

Section 111

The right of the Chancellor of Justice and Ombudsman to receive information

The Chancellor of Justice and the Ombudsman have the right to receive from public authorities or others performing public duties the information needed for their supervision of legality.

The Chancellor of Justice shall be present at meetings of the Government and when matters are presented to the President of the Republic in a presidential meeting of the Government. The Ombudsman has the right to attend these meetings and presentations.

Section 112

Supervision of the lawfulness of the official acts of the Government and the President of the Republic

If the Chancellor of Justice becomes aware that the lawfulness of a decision or measure taken by the Government, a Minister or the President of the Republic gives rise to a comment, the Chancellor shall present the comment, with reasons, on the aforesaid decision or measure. If the comment is ignored, the Chancellor of Justice shall have the comment entered in the minutes of the Government and, where necessary, undertake other measures. The Ombudsman has the corresponding right to make a comment and to undertake measures.

If a decision made by the President is unlawful, the Government shall, after having obtained a statement from the Chancellor of Justice, notify the President that the decision cannot be implemented, and propose to the President that the decision be amended or revoked.

Section 113

Criminal liability of the President of the Republic

If the Chancellor of Justice, the Ombudsman or the Government deem that the President of the Republic is guilty of treason or high treason, or a crime against humanity, the matter shall be communicated to the Parliament. In this event, if the Parliament, by three fourths of the votes cast, decides that charges are to be brought, the Prosecutor-General shall prosecute the President in the High Court of Impeachment and the President shall abstain from office for the duration of the proceedings. In other cases, no charges shall be brought for the official acts of the President.

Section 114

Prosecution of Ministers

A charge against a Member of the Government for unlawful conduct in office is heard by the High Court of Impeachment, as provided in more detail by an Act.

The decision to bring a charge is made by the Parliament, after having obtained an opinion from the Constitutional Law Committee concerning the unlawfulness of the actions of the Minister. Before the Parliament decides to bring charges or not it shall allow the Minister an opportunity to give an explanation. When considering a matter of this kind the Committee shall have a quorum when all of its members are present.

A Member of the Government is prosecuted by the Prosecutor-General.

Section 115

Initiation of a matter concerning the legal responsibility of a Minister

An inquiry into the lawfulness of the official acts of a Minister may be initiated in the Constitutional Law Committee on the basis of:

1) A notification submitted to the Constitutional Law Committee by the Chancellor of Justice or the Ombudsman;
2) A petition signed by at least ten Representatives; or
3) A request for an inquiry addressed to the Constitutional Law Committee by another Committee of the Parliament.

The Constitutional Law Committee may open an inquiry into the lawfulness of the official acts of a Minister also on its own initiative.

Section 117

Legal responsibility of the Chancellor of Justice and the Ombudsman

The provisions in sections 114 and 115 concerning a member of the Government apply to an inquiry into the lawfulness of the official acts of the Chancellor of Justice and the Ombudsman, the bringing of charges against them for unlawful conduct in office and the procedure for the hearing of such charges.

APPENDIX 2

Act on the Chancellor of Justice of the Government (193/2000) (Law reform entered into force 1.6.2011, the changes are not depicted in the text below.)

Section 1
Scope of application
This Act contains provisions on the supervision of legality by the Chancellor of Justice, as referred to in the Constitution, and on the Office of the Chancellor of Justice.

The Chancellor of Justice supervises the activities of advocates (members of the Finnish Bar Association), as provided in the Advocates Act (496/1958; *laki asianajajista*).

Section 2
Supervision of the legality of the official acts of the Government and the President of the Republic
If the Chancellor of Justice notes, in the course of the supervision of the legality of the official acts of the Government or the President of the Republic, that a decision or an act by the Government, a Minister or the President of the Republic gives rise to an observation, he or she shall make that observation and present the reasons for the same. If it is not heeded, the Chancellor of Justice shall have the observation entered into the minutes of the Government and, if necessary, take other measures.

If the Chancellor of Justice notes that a legal issue arising in a matter under consideration in a session of the Government calls for a position, he or she may have that position entered into the minutes of the Government.

The Chancellor of Justice shall monitor that the minutes of the Government are correct.

Section 3
Supervision of the activities of the authorities and of other public activities
When supervising the activities of the courts and other authorities, as well as of other public activities, the Chancellor of Justice carries out investigations on the basis of written complaints addressed to him or her, as well as of notifications by the authorities. The Chancellor of Justice may also open an investigation on his or her own motion.

The Chancellor of Justice is entitled to carry out inspections of the authorities, institutions and other facilities subject to his or her power of supervision.

The Chancellor of Justice revises penal judgments, notifications of which are sent to the Office of the Chancellor of Justice in accordance with the specific provisions thereon.

Section 4
Admissibility
The Chancellor of Justice shall admit a case for an investigation, if there is reason to suspect that a person, authority or other corporation subject to the Chancellor's power of supervision has acted unlawfully or failed to fulfil an obligation, or if the Chancellor otherwise deems there to be a reason for the same. However, the Chancellor of Justice shall not open an investigation on the basis of a complaint pertaining to events occurring more than five years earlier, unless there is a special reason for opening an investigation into the case.

Specific provisions apply to the transfer of a case to the Parliamentary Ombudsman.

Section 5
Casework
The information deemed necessary by the Chancellor of Justice shall be obtained in a case brought before the Chancellor by a complaint or otherwise.

If there is reason to assume that the case may give rise to measures by the Chancellor of Justice, the person, authority or other corporation subject to the Chancellor's power of supervision who is concerned by the case shall be reserved an opportunity to be heard.

Section 6
Measures
If an official, an employee of a public corporation or another person performing a public task has acted unlawfully or failed to fulfil an obligation, the Chancellor of Justice may issue a reprimand to that person to be heeded in future activity, in so far as the Chancellor does not deem that there is a reason to bring a criminal charge against that person. A reprimand may also be issued to a public authority or to some other corporation.

If the nature of the matter so warrants, the Chancellor of Justice may draw the attention of the person concerned to what constitutes lawful or appropriate administrative conduct.

If the public interest so warrants, the Chancellor of Justice shall take measures for the rectification of an unlawful or erroneous decision or conduct.

Section 7
Right of initiative
The Chancellor of Justice has the right to make proposals for the development or amendment of provisions or official instructions, if shortcomings or inconsistencies have been discovered in the supervision or if they have given rise to uncertainty or divergent interpretations in the application of the law or administration.

Section 8
Executive assistance
In the performance of his or her duties, the Chancellor of Justice has the right to immediate executive assistance from all authorities, to the extent of the competence of the authority to provide assistance.

Section 9
No charge for information or documents
The Chancellor of Justice has the right to obtain the information and documents needed in the supervision of legality free of charge.

Section 10
Chancellor of Justice
The Chancellor of Justice has the sole power of decision in all matters falling within his or her official duties.

The duties of the Chancellor of Justice are also performed by the Deputy Chancellor of Justice and, when the latter is prevented from attending to his or her duties, by the Substitute to the Deputy Chancellor of Justice.

The Chancellor of Justice decides especially the matters relating to the supervision of the Government and all matters that are important in terms of principle or magnitude. After having heard the Deputy Chancellor of Justice, the Chancellor of Justice shall decide on the division of tasks between the Chancellor and the Deputy Chancellor.

Section 11
Deputy Chancellor of Justice
The Deputy Chancellor of Justice decides the matters within his or her competence with the same authority as the Chancellor of Justice.

When the Chancellor of Justice is prevented from attending to his or her duties, the Deputy Chancellor of Justice shall see to them.

When the Deputy Chancellor of Justice is prevented from attending to his or her duties, the Chancellor of Justice may invite the Substitute to the Deputy Chancellor to see to them. When the Substitute to the Deputy Chancellor of Justice is attending to the duties of the Deputy Chancellor, the provisions on the Deputy Chancellor in this Act apply correspondingly to the Alternate.

Section 12
Office of the Chancellor of Justice
There is an Office of the Chancellor of Justice attached to the Government for the preparation of cases to be decided by the Chancellor and for the performance of the other tasks within his or her competence; the Chancellor of Justice shall serve as the head of the Office.

Provisions on the organisation of the Office of the Chancellor of Justice, its officials and the consideration and deciding of matters in the Office shall be issued by a Decree

of the Government. More precise rules on the same may be issued by the Rules of Procedure, to be adopted by the Chancellor of Justice.

Section 13
Leave of absence for the Chancellor of Justice and the Deputy Chancellor of Justice
The Chancellor of Justice may take a leave of absence, and grant a leave of absence to the Deputy Chancellor of Justice, of at most thirty days per year. A leave of absence for the Chancellor or the Deputy Chancellor exceeding this limit shall be decided by the President of the Republic.

Section 14
Appointment of the Secretary General
The Secretary General of the Office of the Chancellor of Justice shall be appointed by the President of the Republic on basis of a nomination by the Chancellor of Justice. The appointment shall be made without need of a vacancy announcement.

Section 15
has been repealed by the Act 962/2000.

Section 16
Entry into force
This Act enters into force on 1 March 2000.

This Act repeals the earlier provisions on the Chancellor of Justice.

APPENDIX 3

Government Decree on the Office of the Chancellor of Justice (253/2000)

Section 1
Tasks of the Office of the Chancellor of Justice
The Act on the Chancellor of Justice of the Government (193/2000; laki valtioneuvoston oikeuskanslerista) contains provisions on the tasks of the Office of the Chancellor of Justice.

Section 2
Organisation
The Office of the Chancellor of Justice comprises the Department for Government Affairs, the Department for Legal Supervision, and the Administrative Unit.

The Chancellor of Justice decides on the placement of officials into the Departments and the Unit.

Section 3
Rules of Procedure
The Rules of Procedure of the Office of the Chancellor of Justice contain provisions on the management of the Office, the steering committee, the tasks and organisation of the Departments and the Administrative Unit, the tasks and deputisation of officials, the preparation and decision of cases and, if necessary, the other administrative matters pertaining to the Office.

The Chancellor of Justice adopts the Rules of Procedure.

Section 4
Officials
The Office of the Chancellor of Justice has a Secretary General, Referendary Counsellors serving as Heads of Department, Referendary Counsellors, Consulting Officials, Senior Chancellor's Clerks, Junior Chancellor's Clerks and Referendaries.

The Office may also have an information planner, a personnel secretary, department secretaries and other officials. In addition, the Office may have other personnel in temporary positions and experts appointed for specific tasks.

Matters are presented by decision in the Office by the officials referred to in paragraph (1) and by the officials specifically designated by the Chancellor of Justice.

Section 5
Qualification requirements for officials
The qualification requirements for officials in the Office of the Chancellor of Justice are as follows:

1) for the Secretary General, a higher University degree in law, and judicial experience or good knowledge of administration, as well demonstrated leadership skills and management experience;
2) for a Referendary Counsellor serving as Head of Department, a higher University degree in law, and judicial experience or good knowledge of administration, as well as demonstrated leadership skills;
3) for a Referendary Counsellor, a Consulting Official, a Senior Chancellor's Clerk and a Junior Chancellor's Clerk, a higher University degree in law, and judicial experience or good knowledge of administration;
4) for a Referendary, a higher University degree in law;
5) for other officials, a suitable University degree or the other training or education necessary for the task.

Section 6
Appointment of officials
The Chancellor of Justice appoints the officials of the Office of the Chancellor of Justice. Separate provisions apply to the appointment of the Secretary General.

The Chancellor of Justice appoints to temporary positions in the Office. However, the Government appoints to a temporary position as the Secretary General for a period longer than one year.

Section 7
Leave of absence
The Chancellor of Justice grants leave of absence to the officials referred to in section 4(3).

The Government grants leave of absence to the Secretary General, if the period of leave is to be longer than one year and is not based on the Civil Service Act or the collective agreement applicable to civil servants.

The Secretary General grants leave of absence to other officials for at most three months; the Chancellor of Justice grants leave of absence for a period longer than three months.

Section 8
Decision of matters
The Chancellor of Justice decides the matters that are to be decided in the Office of the Chancellor of Justice, unless this power of decision has in the Rules of Procedure been assigned to an official in the Office. The exercise of the power of decision in matters relating to the position of Chancellor of Justice is governed by the provisions of the Act on the Chancellor of Justice of the Government.

The Chancellor of Justice may reserve the power of decision in a matter that otherwise would be decided by an official. In individual cases, the Secretary General and a Head of Department have the same power in a matter that otherwise would be decided by a subordinate official.

Section 9
Presentation of draft decisions
The matters to be decided by the Chancellor of Justice shall be decided upon presentation of a draft decision, unless the Chancellor otherwise orders. If necessary, provisions may be issued by the Rules of Procedure on the other matters that are to be decided upon presentation of a draft decision.

If, in a matter to be decided upon presentation of a draft decision, the position of the presenting official differs from the decision, the presenting official has the right to have the position entered into the archival copy of the decision.

Section 10
Salary of the Substitute to the Deputy Chancellor of Justice
During the periods when the Substitute to the Deputy Chancellor of Justice is seeing to the duties of the Deputy Chancellor, the salary of the Substitute shall be determined on the same basis as that of the Deputy Chancellor.

Section 11
Entry into force
This Decree shall enter into force on 1 March 2000.

This Decree repeals the earlier Decree on the Office of the Chancellor of Justice.

APPENDIX 4

Act on the Division of Duties between the Chancellor of Justice of the Government and the Parliamentary Ombudsman (1224/1990)

Section 1

The Chancellor of Justice of the Government is released from the duty to oversee legality in matters falling within the competence of the Parliamentary Ombudsman and concerning:

1) The Ministry of Defence, except for the oversight of the legality of the official acts of the Government and the Ministers, the Defence Forces, the Frontier Guard Service, crisis management personnel as referred to in the Military Crisis Management Act (211/2006; laki sotilaallisesta kriisinhallinnasta), and military court proceedings; (216/2006)
2) apprehension, arrest, detention and travel ban under the Coercive Measures Act (450/1987; pakkokeinolaki), and taking into custody and other deprivation of liberty;
3) prisons and other institutions where individuals are kept on an involuntary basis.

The Chancellor of Justice is likewise released from dealing with matters falling within the competence of the Parliamentary Ombudsman and lodged by persons who have been deprived of liberty through detention, arrest or other measures.

Section 2

In the cases referred to in section 1, the Chancellor of Justice shall transfer the matter to be dealt with by the Ombudsman, unless the Chancellor for special reasons considers it expedient to self decide the matter.

Section 3

The Chancellor of Justice and the Ombudsman may transfer between them also other matters falling within the competence of both authorities, when a transfer can be expected to expedite the processing of the case or when it is for some other special reason justified. In a complaint matter, the complainant shall be notified of any transfer.

Section 4

This Act shall enter into force on 1 January 1991.

This Act shall repeal the earlier provisions on the bases of the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman.

This Act shall apply also to matters pending at the Office of the Chancellor of Justice or the Office of the Parliamentary Ombudsman at its entry into force.

APPENDIX 5

Sections concerning the duties of the Chancellor of Justice in the Advocates Act (1958/496)

Section 6

(30 July 2004/697) The Board of the Bar Association shall supervise that advocates fulfil their obligations when appearing in a court of law or before another authority as well as in their other activities. An advocate has an obligation to supply the Board with the information required for this supervision. Moreover, an advocate shall permit a person designated by the Board to carry out an audit in his office, where the Board deems this necessary for the exercise of the supervision, and in this context present the documents required for carrying out the audit. A member of the Board and the auditor shall not without authorization disclose any secret information learned in the context of the supervision.

When deciding issues pertaining to membership in the Bar Association, the members of the Board shall have the responsibility of public officials.

The Chancellor of Justice has the right to initiate a supervision matter referred to in section 7c, if he deems that the advocate is in violation of his or her duties. The Chancellor of Justice has likewise the right to demand that the Board of the Bar Association undertake measures against an advocate, if he deems that the latter has no right to serve as an advocate. The Board of the Bar Association and the advocates shall supply the Chancellor of Justice with the information and accounts necessary for the performance of the duties assigned to him under this Act.

Section 7c

(30 July 2004/697) A supervision matter shall become pending when a written complaint against an advocate, a notice by the Chancellor of Justice or a notice issued by a court of law under chapter 15, section 10a, of the Code of Judicial Procedure is received at the Office of the Bar Association. A matter shall become pending also where the Board of the Bar Association has decided to refer a matter before it to be dealt with by the Disciplinary Board.

If a complaint contains such shortcomings that the matter cannot be taken up for a decision on the basis thereof, the complainant shall be exhorted to remedy the shortcomings within a set period. At the same time, the complainant shall be advised of the nature of the shortcomings and of the fact that the Disciplinary Board may decline to consider the matter if the complainant fails to heed the exhortation. The Disciplinary Board shall not reopen the consideration of an already decided case on the basis of a new complaint, unless the complaint contains relevant new information.

If the events covered by the complaint have occurred more than five years previously, the Disciplinary Board may decline to consider the complaint.

Section 10

(30 July 2004/697) A person whose application under section 3, paragraph 4, or section 4, paragraph 1, has been rejected or who has not been entered into the EU register, or who has been sanctioned or struck from the Roll of Advocates or the EU register, has the right to appeal against the decision of the Board or the Disciplinary Board to the Helsinki Court of Appeal.

The Chancellor of Justice has the right to appeal the decisions of the Board or the Disciplinary Board on matters referred to in sections 7 and 9.

The period for filing an appeal is thirty days. The appeal period begins on the date of service of the decision on the recipient. At the latest on the last day of appeal period, before the end of government office hours, a written appeal addressed to the Helsinki Court of Appeal shall be delivered to the Office of the Bar Association, at the risk of loss of standing. The Bar Association shall without delay forward the appeal and its annexes, a copy of the decision, and its own statement on the appeal to the Court of Appeal.

When hearing the appeal, the Court of Appeal shall reserve the Chancellor of Justice, the Bar Association and the complainant an opportunity to be heard on the appeal and, where necessary, to submit evidence and other information.

The provisions on entry into force and implementation of the latestamendment Act (30 July 2004/697) are as follows:

This Act enters into force on 1 November 2004.

This Act applies also to supervision matters and fee disputes pending at its entry into force. As regards sanctions, any acts or omissions shall be assessed by applying the legislation resulting in the more lenient sanction against the advocate.

The term of the Disciplinary Board in office at the entry into force of this Act shall continue until its set conclusion. Notwithstanding the provision in section 7a, paragraph 1, the first appointment of the third non-member of the Bar and the respective alternate shall be for a term of one year.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.

APPENDIX 6

Rules of Procedure of the Office of the Chancellor of Justice

(17. December 2007)

General provisions

Section 1
Scope of application
In addition to what has been provided in the Constitution, the Act on the Chancellor of Justice of the Government (193/2000), and the Government Decree on the Office of the Chancellor of Justice (253/2000), the provisions in these Rules of Procedure apply to the duties and the division of tasks between the Chancellor of Justice and the Deputy Chancellor of Justice, and the Departments, Units and personnel of the Office of the Chancellor of Justice.

Section 2
Division of tasks between the Chancellor of Justice and the Deputy Chancellor of Justice
The Chancellor of Justice shall be the primary decision-maker in matters pertaining to

1) the Parliament;
2) the President of the Republic;
3) the Government, the Ministers, and the Ministries;
4) the most senior civil servants;
5) the Office of the Chancellor of Justice;
6) international co-operation and international affairs;
7) the national preparation of European Union affairs;
8) the supervision of advocates;
9) statements by the Chancellor of Justice; and
10) issues that are extensive or significant in terms of principle.

The Deputy Chancellor of Justice shall decide matters pertaining to

1) the complaints lodged with the Chancellor of Justice, in so far as these are not to be decided by the Chancellor of Justice,
2) criminal charges against officials in the judicial system for offences in office;
3) penal judgments and measures arising from the same;
4) extraordinary appeals; and
5) other similar issues which do not belong primarily to the Chancellor of Justice.

The Deputy Chancellor of Justice shall revise the minutes of Government sessions. The Deputy Chancellor of Justice shall likewise carry out inspections in courts of law and other authorities.

The Chancellor of Justice may also decide for some other division of tasks for a given issue or type of issue. If it is not clear which official is to decide a matter, the Chancellor of Justice shall resolve this question.

Section 3
Steering Committee
The Steering Committee is a consultative body for the consideration of matters pertaining to the Office of the Chancellor of Justice and its activities. The Steering Committee is composed of the Chancellor of Justice as chairman, the Deputy Chancellor of Justice as deputy chairman, the Secretary General, the Heads of Department and the Communications Officer, as well as two members of staff elected by the staff meeting for one year at a time. The Personnel Secretary serves as the secretary of the Steering Committee.

The Steering Committee is convened by the Chancellor of Justice. The chairman shall set the agendas of Committee meetings.

Departments and Units

Section 4
Department of Government Affairs
The Department of Government Affairs deals with the following matters:
1) Matters pertaining to the supervision of the Government;
2) complaint matters connected to the supervision of the Government;
3) matters pertaining to the supervision of advocates and public legal aid attorneys;
4) matters pertaining to international organisations for the oversight of legality, as well as international matters pertaining to fundamental rights and human rights;
5) matters pertaining to the national preparation of European Union affairs; and
6) the preparation of statements on issues within the competence of the Department.

Section 5
Department for Legal Supervision
The Department for Legal Supervision deals with the following matters:
1) Complaints lodged with the Chancellor of Justice and matters pertaining to the supervision of courts of law and other oversight of legality, in so far as these do not fall within the competence of the Department of Government Affairs;
2) matters pertaining to criminal charges against officials in the judicial system for offences in office;
3) the revision of penal judgments;
4) matters pertaining to extraordinary appeals;
5) the preparation of statements on issues within the competence of the Department;
6) assistance in matters pertaining to the supervision of the Government; and
7) assistance in international matters in accordance to specific instructions thereon.

Section 6
Administrative Unit
The Administrative Unit deals with the following matters:

1) Matters pertaining to the internal administration and finances of the Offfice;
2) matters pertaining to international co-operation, in so far as these do not fall within the competence of a Department;
3) matters pertaining to personnel training;
4) the editorial work on the Annual Report of the Chancellor of Justice;
5) matters pertaining to communications and public relations; and
6) other matters to be dealt with in the Office of the Chancellor of Justice, where these do not fall within the competence of either of the Departments.

Section 7
Specific assignment of matters
The Chancellor of Justice may assign a matter to be dealt with by a Department or Unit other than that provided in sections 4-6 or jointly by more than one of them.

Section 8
Assignment of officials
After having heard the Heads of Department, the Chancellor of Justice decides, upon presentation of a draft decision by the Secretary General, on the assignment of officials to the Departments and Units.

Duties of officials and deputisation

Section 9
Secretary General
The duties of the Secretary General are:

1) To manage the internal activities of the Office of the Chancellor of Justice and to see to its performance and development;
2) to present the Rules of Procedure of the Office of the Chancellor of Justice for adoption;
3) to prepare matters pertaining to the operational and financial planning and budgeting of the Office of the Chancellor of Justice;
4) to deal with matters of appointment, leave of absence, termination and position rearrangement, as well as other personnel matters;
5) to see to the preparation of the Annual Report of the Chancellor of Justice;
6) to distribute the incoming matters to the Departments and the Administrative Unit;
7) to participate in the preparation of the statements of the Chancellor of Justice; and
8) to deal with the other matters that the Chancellor of Justice by their nature assigns to the Secretary General.

The Secretary General serves as the Head of the Administrative Unit; he or she is subject to the provisions in section 10 (1) and (3) in so far as appropriate.

The Secretary General shall monitor the caseloads of the Departments and Units and, where necessary, make proposals for changes in the assignment of officials or for other arrangements.

Section 10
Head of Department
The duties of a Head of Department are:

1) to manage and develop the activities of the Department and to answer for its performance;
2) to supervise that the matters in the Department are dealt with conscientiously, expediently and efficiently;
3) to see to it that the officials in the Department are given the necessary support and guidance;
4) to distribute the Department's incoming matters to the officials in the Department for preparation and presentation;
5) to prepare and present the most important matters in the Department; and
6) to perform the tasks specifically assigned by the Chancellor of Justice to him or her.

When distributing matters, the Head of Department shall strive to assign specifically the most important matters to Referendary Counsellors and similar matters to the same officials, as well as to distribute the workload evenly among the officials in the Department.

Where necessary, the Head of Department shall arrange departmental staff meetings for the development of the Department's activities and for discussion of issues of relevance to the Department.

In addition, the Head of the Department of Government Affairs shall participate in tasks pertaining to the supervision of the Government, as well as prepare and present statements of the Chancellor of Justice.

In addition, the Head of the Department for Legal Supervision shall participate in tasks pertaining to the supervision of the Government as instructed by the Chancellor of Justice.

Section 11
Presenting officials
The officials tasked to present draft decisions shall prepare and present the matters assigned to them for a decision by the Chancellor of Justice or the Deputy Chancellor of Justice, as provided above in section 2.

Section 12
Personnel Secretary
The duties of the Personnel Secretary are the preparation of the personnel, financial, training and other matters of the Office of the Chancellor of Justice, bookkeeping and the keeping of the official personnel records.

Section 13
Communications Officer
The duties of the Communications Officer are to see to the external and internal communications of the Office of the Chancellor of Justice and to assist in the preparation of the Annual Report of the Chancellor of Justice.

Section 14
Information Officer
The duties of the Information Officer are to serve as the librarian of the Office of the Chancellor of Justice, and to participate in the information services of the Office and the planning, search and maintenance of information sources.

Section 15
Notaries
Notaries, of whom two shall primarily act as secretaries to the Chancellor of Justice and the Deputy Chancellor of Justice, shall assist the presenting officials in their Department in matters prepared by them and perform duties assigned by the Head of Department. Separate instructions shall be issued about which presenting official each notary shall primarily assist.

Section 16
Registrar
The duties of the Registrar are to see to the registry and archiving functions of the Office of the Chancellor of Justice and to the customer service relating to the same.

Section 17
IT Planner
The duties of the IT Planner are to maintain the IT equipment, network and databases of the Office of the Chancellor of Justice, to act as a liaison to suppliers and the other IT personnel in the Government, to serve as the IT support person of the Office, and to participate in the technical preparation of the Annual Report of the Chancellor of Justice.

Section 18
Head Porter
The duties of the Head Porter are to see to the office services of the Office of the Chancellor of Justice, to see to the procurement of furniture and equipment, and to maintain a register of movable assets.

The Head Porter is the supervisor of the Senior Porter and the Porter.

Section 19
Other officials
Other officials shall perform the duties assigned to them in their job descriptions or separate orders.

Section 20
Specifically assigned tasks
The Chancellor of Justice shall assign one of the presenting officials to act as an IT users' representative.

In addition, all officials shall see to the tasks specifically assigned to them.

Section 21
Deputisation
When the Secretary General or a Head of Department are prevented from attending to their duties, they shall be deputised by the officials designated by the Chancellor of Justice.

The Secretary General or a Head of Department shall decide on other deputisations.

Decision-making

Section 22
Presentation and signature of instruments
The Chancellor of Justice and the Deputy Chancellor of Justice shall, unless otherwise decided by them on an individual case, decide matters within their competence upon presentation of a draft decision.

The Secretary General shall decide the matters within his or her competence without presentation.

The presenting official shall obtain information and accounts on matters under investigation unless it ensues from the nature of the matter that the official who is to decide the matter should decide on this.

In matters decided upon presentation, the instrument shall be countersigned by the presenting official.

Letters by presenting officials shall be signed by that official only. Where a letter by a presenting official constitutes an instrument produced on a decision by the Chancellor of Justice or the Deputy Chancellor of Justice, this status must appear from the letter.

Section 23
Decision-making in matters pertaining to the Office of the Chancellor of Justice
Decisions on matters pertaining to the Office of the Chancellor of Justice shall be made by the Chancellor of Justice unless otherwise provided by the Decree on the Office of the Chancellor of Justice (253/2000) or a provision below herein.

Matters pertaining to access to documents shall be decided by the official competent to decide on the matter. In other cases and in matters pertaining to archived documents, the decision shall be made by the Secretary General.

With the exemptions referred to below, the Secretary General shall decide matters pertaining to the use of appropriations available for the activities of the Office of the Chancellor of Justice, travel claim forms and reimbursement of expenses, personnel training and the registration and archiving of documents.

Heads of Department shall, regarding the appropriations allocated for their Department in the Office's internal allocation of appropriations confirmed by the Chancellor of Justice, decide upon matters pertaining to their use, travel claim forms and reimbursement of expenses, and personnel training for their respective Departments.

Miscellaneous provisions

Section 24
Incoming matters
When registering incoming documents, the registrar shall mark the document and make an entry in the register as to which Department or Unit is to deal with the matter.

Once the Chancellor of Justice and the Deputy Chancellor of Justice have perused the incoming documents, the Secretary General shall verify the assignment of matters.

The matters assigned to a Department are delivered to the Head of Department, who distributes them to the officials in the Department.

If it is unclear as to which Department or Unit is to deal with a matter, the Secretary General shall resolve this issue.

Section 25
Register of decisions
A register of decisions is kept on those matters decided in the Office where no instrument is issued.

The register of decisions shall indicate the matter concerned, the date and number of the decision, the decision-maker, the presenting official and those issued an extract of the register.

Section 26
Annual vacation schedule
After having heard the Heads of Department, the Chancellor of Justice adopts the annual vacation schedule upon presentation by the Secretary General.

Section 27
Official travel
The official trips of the Chancellor of Justice and the Deputy Chancellor of Justice are entered in a list kept by the personal secretary of the Chancellor of Justice; all trips are entered in the list immediately after the travel decision has been made. The official preparing the trip draws up an expense estimate and delivers it to the Personnel Secretary.

The Secretary General goes on official trips by the instructions or permission of the Chancellor of Justice. The Chancellor of Justice and the Deputy Chancellor of Justice issue travel instructions to the officials accompanying them. In other cases, officials' travel instructions are issued by the Secretary General.

Section 28
Personnel involvement
The personnel involvement in the Office of the Chancellor of Justice proceeds in accordance with the provisions of the Act on Co-operation in State Offices and Institutions (651/1988; laki yhteistoiminnasta valtion virastoissa ja laitoksissa) and the terms in the agreements concluded on the basis of that Act.

Section 29
Other rules and guidelines
Furthermore, the provisions of the Archival Rules of the Office of the Chancellor of Justice and the Financial Regulations of the Prime Minister's Office pertaining to the Office of the Chancellor of Justice shall be complied with.

Furthermore, the operational and financial plan, the performance plan, the health and safety and equality programme, the personnel training plan and the communications plan of the Office of the Chancellor of Justice and any other guidelines adopted by the Chancellor of Justice shall be taken into account in the activities.

Section 30
Entry into force
These Rules of Procedure enter into force on 1 January 2008.

These Rules of Procedure repeal the earlier Rules of Procedure.

APPENDIX 7

Procedure for lodging a complaint

In practice, the supervision of legality primarily takes the form of ruling on a citizen's complaint filed with the Chancellor of Justice concerning the actions of an authority or public official.

What kinds of complaints are filed with the Chancellor of Justice?

All citizens are entitled to apply to the Chancellor of Justice in matters that directly concern them, or in any other matter, should the complainant believe that an authority, public official or public body has acted in a manner that violates his or her rights, or that a member of the Bar has neglected his or her responsibilities. All citizens may also apply to the Chancellor of Justice if they believe that a constitutional or human right guaranteed under the Constitution has not been observed.

How is a complaint filed?

Complaints are made in writing. The following points should be mentioned:

- the identity of the public official, authority or public corporation that is the subject of the complaint;
- a description of the action that the complainant regards as illegal; and
- the name, address and signature of the complainant.

Any relevant documents may be appended to the complaint. These documents will be returned when the matter is resolved, or even earlier if so requested.

The Chancellor of Justice will not investigate a complaint if five years or more have elapsed since the alleged violation, unless warranted by some special reason.

How are complaints dealt with?

Legally trained personnel process complaints and obtain any necessary supplementary documentation. The Chancellor of Justice is entitled to approach any authority for information and documents, including material classified as secret. If necessary, the Chancellor of Justice may ask the police to carry out an investigation.

Complainants are usually given an opportunity to file a rejoinder before the matter is resolved, and they will receive a written response by mail.

How are complaints resolved?

The Chancellor of Justice may
- issue a reprimand to an official or body;
- issue instructions on the proper procedure for future reference;
- or, in more serious cases, order charges to be brought against the official.

The Chancellor of Justice is not authorized to annul or amend a decision taken by an authority, nor can he order payment of damages. If a clear error is noted, the Chancellor of Justice will strive to have it corrected.

The Chancellor of Justice has the power, if he deems it necessary, to recommend the amendment of provisions or regulations, and to initiate proceedings to annul a court ruling or for some other extraordinary appeal.

The Chancellor of Justice is empowered to initiate disciplinary proceedings against a member of the Bar and has the right to appeal decisions of the Board of the Finnish Bar Association on disciplinary matters.

An investigation carried out by the Chancellor of Justice may in itself result in the authority or public official correcting an error.

The services of the Office of the Chancellor of Justice are free of charge to the complainant.

APPENDIX 8

Complaint to the Chancellor of Justice

Complainant's name and address: Telephone (during office hours):

Subject of the complaint (authority, official or other person or institution):

Procedure, action or decision considered illegal by the applicant:

Brief description of the course of events and the dates:

Unlawful aspects of the procedure, action or decision:

Recommended action by the Chancellor of Justice:

Time and place Signature

If necessary, please continue on the other side of this form or on another sheet.

Staff of the Office of the Chancellor of Justice on 31 December 2010

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ISSN 1456-4998